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PAYMENT-IN-KIND PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON
SELECT REVENUE MEASURES

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

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PAYMENT-IN-KIND PROGRAM

THURSDAY, NOVEMBER 3, 1983

House of Representatives,
Committee on Ways and Means,
Subcommittee on Select Revenue Measures,
Washington, D.C.

The subcommittee met at 10:15 a.m., pursuant to notice, in room B-318, Rayburn House Office Building, Hon. Fortney H. (Pete) Stark (chairman of the subcommittee) presiding.

[The press release announcing the hearing and miscellaneous materials follow:]

[Press Release of Tuesday, Oct. 25, 1983]

Hon. Fortney H. (Pete) Stark, Chairman, Subcommittee on Select Revenue Measures, Committee on Ways and Means, Announces a Public Hearing on the Payment-in-Kind (PIK) Program To Be Held Thursday, November 3, 1983

The Honorable Fortney H. (Pete) Stark (D., Calif.), Chairman, Subcommittee on Select Revenue Measures, Committee on Ways and Means, U.S. House of Representatives, today announced a public hearing on the payment-in-kind (PIK) program to be held Thursday, November 3, 1983, at 10:00 a.m. in Room B-318 Rayburn House Office Building. The Subcommittee at this time will hear from invited witnesses only. It is expected that representatives of the Departments of the Treasury and Agriculture, and the General Accounting Office will testify. The Subcommittee may wish to call additional witnesses at a later date.

BACKGROUND

The Department of Agriculture has adopted a payment-in-kind (PIK) program under which farmers are paid with commodities for diverting all or certain portions of their farmland from production. As presently announced, the PIK program applies for 1983 acreage reduction of land used for the production of wheat, corn, sorghum, rice, and upland cotton, and 1984 acreage reduction of land used for the production of wheat only.

In response to concerns that the potentially adverse tax consequences of participation in the PIK program might discourage farmers from participating, Congress acted expeditiously in March to enact legislation providing special tax treatment for taxpayers participating in the PIK program (H.R. 1296; Public Law 98-4) that had been announced previously.

Generally, Congress provided that recognition of income from commodities received in the 1983 PIK program is deferred from the date the commodities are received (or constructively received) until the date on which the commodities are sold. In addition, real property withdrawn from production in exchange for a PIK payment under the 1983 PIK program will be treated as used in an active farming use for purposes of qualifying for the favorable estate tax current valuation and installment payment provisions.

However, Congress determined that this special treatment should apply only for the 1983 crop year because of the brief time that was available to it to consider the issues presented by the PIK program, and the lack of sufficient data on the allocation of benefits under the PIK program. Further, Congress required the Secretary of the Treasury, after consultation with the Secretary of Agriculture, to conduct a study of the 1983 PIK program and the tax treatment accorded participants and submit a report to Congress not later than September 1, 1983, with appropriate recommendations. The report has not yet been received.

SCOPE OF HEARING

The Subcommittee believes it is important at this time to examine those issues associated with the PIK program that it was unable to evaluate earlier this year because of time constraints and inadequate data. Moreover, the Department of Agriculture has announced an extension of the PIK program for 1984 wheat. Thus, a hearing at this time will enable the Subcommittee to determine whether an extension of the favorable tax treatment provided by Public Law 98-4 is appropriate. Specifically, the Subcommittee will examine the following issues:

(1) the relative benefits accorded PIK participants by income class and by actual dollar amounts received for different crops;

(2) the relative income and tax benefits of the PIK program compared to income and tax benefits that would have been received by owners of farm property had actual crop production occurred;

(3) the cost-effectiveness of the PIK program relative to other types of agricultural support programs; and,

(4) the effect of farmland diversion programs in general on the cost-benefit analysis of other Federal progams, such as reclamation projects.

To assist the Subcommittee in its oversight of this program, the General Accounting Office, at the Chairman's request, has completed a study of the PIK program and will present its results to the Subcommittee at this hearing.

DETAILS FOR SUBMITTING WRITTEN STATEMENTS FOR THE RECORD

Any interested person or organization may file a written statement for inclusion in the printed record. Persons submitting a written statement should submit at least six (6) copies by the close of business, Tuesday, November 15, 1983, to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements for the record to the press and the interested public, they may submit 100 additional copies for this purpose if provided to the full Committee office during the course of the public hearing.

Opening Statement of Hon. Fortney H. (Pete) Stark

The Subcommittee meets today in an oversight capacity to review the payment-in-kind (PIK) program. On February 23 of this year the Subcommittee met to consider legislation to address the tax consequences of participation in the program. At that time the Subcommittee expressed considerable concern over the lack of data on the cost of the PIK program, its impact on the farm community, the types of recipients of PIK payments and the size of individual PIK payments. As a result of these concerns, I requested the General Accounting Office to prepare a report for the Subcommittee on the cost of the PIK program, the nature of individual PIK payments and the overall effectiveness of the PIK program.

The GAO has responded to these questions—and will present a number of strong criticisms of the program.

At this time, the Department of Agriculture has only announced a 1984 PIK program for wheat. It will be necessary for this Subcommittee to once again consider the need for special tax consideration for these 1984 PIK payments. It is my hope that this hearing today will give the Subcommittee much of the data that we were lacking when we first considered this issue.

At that time I expressed considerable concern over the fact that PIK payments in excess of the $50,000 statutory limit would be made to individual farmers. That fear proved correct: the GAO has found payments to a single farmer worth $3.7 million—and when one calculates the value of the commodities given to that farmer at today's prices—the value is over $5 million. Huge conglomerate corporations received millions of dollars in payments, while foreclosures and farm depression continued to erode family farmers throughout the Nation. The $50,000 limit has always been a crucial mechanism for assuring that our farm assistance programs are targeted toward the average American farmer and are not pouring millions of tax dollars into the troughs of giant farms and the corporate farming divisions of huge conglomerates.

It was therefore with great interest that I learned yesterday that the General Counsel of the General Accounting Office has issued an opinion stating that PIK payments must comply with the $50,000 maximum payment.

I agree with the GAO, and I want to know how we can make sure this kind of trickle down farm policy never happens again, and how we can recover funds from some of the largest corporations and wealthiest farmers in America. Let me state for the record that I am considering filing a suit on behalf of the taxpayers to recover these millions of dollars of illegal payments. I hope all the witnesses will discuss this situation at length.

I believe in the ideal of the family farm. I believe in helping the small businessman/farmer. I believe PIK was an inefficient and more-costly-than-necessary way to help the farm economy. Farm programs like PIK, where millions of dollars are paid to a few for not working go against the grain and spirit of the American people. They destroy support for all farm programs, even those which help the smaller farmers.

I hope the lessons we learn from this hearing will cause us in the Congress, in the Department, and in the farm community to never, ever again propose a similar program.

Our first witness today is Mr. Crowley from the General Accounting Office. Mr. Crowley, you may proceed in any manner you wish.

[From the Congressional Record, Nov. 2, 1983]

STATEMENT OF CONGRESSMAN FORTNEY H. (PETE) STARK ON GAO'S OPINION RE THE $50,000 CAP APPLYING TO THE PAYMENT-IN-KIND PROGRAM

(Extensions of Remarks)

Mr. Speaker, yesterday, the GAO sent to the Secretary of Agriculture a legal opinion that the Department has been breaking the law by making Payment in Kind or PIK payments in excess of $50,000 to farmers.

My Ways and Means Select Revenue Measures Subcommittee will hold a hearing on Thursday, November 3, on the PIK program, in which the GAO will detail how various farmers have received millions of dollars worth of PIK payments for literally doing nothing.

Mr. Speaker, I agree wih the GAO. The failure to impose a cap is illegal. It is another example of how this Administration gives to the rich, in the hope that it might trickle down to the middle and low income. In farm terms, the Administration has decided to feed the sparrows in the field by giving the horses oats.

The PIK program should have had a $50,000 cap. It would have cost the taxpayer less. It would have helped smaller farmers, and would not have contributed to the growth of agribusiness. And most of all, it would have been legal.

We first imposed a $50,000 cap on cash payments to individual farmers in 1970. As one Congressman said then, and as I say now:

"The taxpayers of this country rightfully resent tax funds being drained off in individual payments of hundreds of thousands, even millions of dollars, and part of this resentment is unfairly rubbing off on the small and moderate-sized farmers for whom this program was originally intended. These large payments are jeopardizing the very existence of the entire farm program * * *.

In this era of record unemployment, homelessness, and hunger, the Administration has dragged its feet on distributing surplus food and has repeatedly slashed feeding programs for the truly needy. Yet under the PIK program, they have given over $3.6 million worth of commodities to just one farmer in Central California. That amount of money would have paid for the feeding of 8,080 individuals under the Women, Infant, and Children program (WIC) for one year! It would have paid for the feeding of 2,942 families or almost 9,000 people under the food stamp program for one year.

Never, Mr. Speaker, has an Administration had its priorities so distorted. Not only are large PIK payments illegal. They are immoral.

[From the Congressional Record, Nov. 2, 1983]

THE GRAPES OF WEALTH: CORPORATE AMERICA MAKING MILLIONS ON PIK; THE EXAMPLE OF BANGOR PUNTA CORP.

(Special Orders)

Mr. Speaker, Thursday, November 3, the Ways and Means Select Revenue Measures Subcommittee will hold a hearing on the PIK (Payment-in-Kind) program. The GAO will testify, giving data on the largest ten recipients of Federal subsidies for not growing crops.

One of the top ten was South Lake Farms of Fresno, which is receiving, according to the GAO, approximately $2,449,553 for not growing cotton.

South Lake is part of the $600 billion-plus Bangor Punta Corporation conglomerate. Bangor Punta owns some 17,000 acres of cotton land in the region.

According to Bangor Punta's 1982 annual report, Producers Cotton Oil, the operator of South Lake Farms, is an integrated grower, processor, warehouser and merchandiser of cotton and related by-products. Producers operates 43 cotton gins in California and 21 cotton gins in Arizona in addition to two oilseed mills and extensive warehousing facilities in California. "It is the largest processor of cotton in the Western U.S.," says the 1982 Annual Report.

An examination of Bangor Punta's annual reports for 1982, 1981, and 1980 reveals that:

Its cotton operations have generally had a better return on average assets than its other divisions, such as Piper Airlines and Smith & Wesson;

Bangor Punta has been selling off much of its farm land and concentrating on its ginning operations—and these land sales have provided important profits to the parent corporation. For example, the 1982 annual report notes that in fiscal 1981 the gain on the sale of farmland was $19,364,000, nearly half the corporation's profits for that year;

Land is being sold despite the fact that in 1981, Producers Cotton had record operating profits, of $13.9 million for a profit margin of 11.8% and a return on average assets of 24.5 percent;

The tax on the gain on these land sales has been at about 31%, not the corporate rate, because of capital gains;

The sale of the land was particularly profitable, because "the farmland's value since acquisition has appreciated at a rate greater than general inflation as measured by the CPI-U." (quote from 1981 Annual Report); and

Of the 8,000 conglomerates remaining 17,000 acres are farmland "restricted under the Reclamation Act of 1902." In other words, this is (or will be) land subsidized by the public through cheap water—even when the corporation is being paid millions not to grow.

Mr. Speaker, looking at this one case—where nothing illegal was done in any way—is a classic of what is wrong with the Administration's farm policy.

It is a policy which helps the wrong people.

It helps big farmers and corporations. No one has ever considered giving the small businesses in my District money not to produce and not to hire. Farm foreclosures have continued all this year, as the small farmer and the family farmer fails to be helped enough by USDA.

It is a policy which pays people in areas of California not to grow, at the same time the Interior's Bureau of Reclamation is subsidizing them to grow. In the case of this Bangor Punta corporation, the government is paying them to sit on their land and do nothing—but wait for it to appreciate so they can sell it off at huge profits taxed at a low rate.

This isn't cotton farming—it is the harvesting of the grapes of wealth.

[Congressman Stark's News Letter, Nov. 3, 1983]

STARK HEARING REVEALS HUGE WELFARE SUBSIDIES TO BIG VALLEY FARMERS; GAO RULES PAYMENTS ABOVE $50,000 ILLEGAL

WASHINGTON.—Rep. Fortney H. (Pete) Stark, supported by a new government report revealing multimillion-dollar subsidies to rich U.S. farming interests, today (Nov. 3) called for an end to Reagan Administration policies that have established an "illegal welfare program for big agribusiness."

Stark, chairman of the Ways and Means Select Revenue Measures subcommittee, referred to a General Accounting Office (GAO) study of the Department of Agriculture's Payment-In-Kind (PIK) program, and a GAO legal opinion that rules against the legality of waiving the $50,000 ceiling on federal aid payments to individual farmers.

The PIK program gives cotton, wheat, grain, corn and rice to farmers for not planting all or part of their 1983 crops. In the past, farmers have been paid cash for keeping land out of production, but the limit was $50,000 per farmer.

The USDA waived the payment limitation, arguing that the limit would not apply because farmers would be receiving a commodity rather than cash.

"We surely want to help the struggling farmer, who sometimes needs Federal assistance, through hard times," Stark said. "But removing the $50,000 cap has resulted in disproportionate federal aid to the larger farms which prosper without federal assistance."

"PIK is another one of Mr. Reagan's rules for the rich, giving the most to those who already have the most."

Stark, who requested the GAO study, substantiated his case with several examples, including one farm conglomerate, South Lake Farms of Fresno, Calif., which will receive PIK payments totaling over $2.4 million for not growing cotton.

"South Lake, one the PIK program's top recipients, is part of Bangor Punta Corporation, a $600-million operation that also owns Piper Airlines and Smith and Wesson guns," Stark said. "The company's farm and gin-mill operation, touted as the largest cotton processor in the western states, had record operating profits of nearly $14 million in fiscal 1981, plus another $19 million from selling farmlands."

"Despite its wealth and profitibility, however, South Lake had its hand out for the overly-generous PIK payments. Many other wealthy farming interests have done the same."

The GAO report estimated conservatively that 1983 PIK payments could amount to $11 billion.

Stark expressed his views during a hearing on the PIK program before his Select Revenue Measures subcommittee, which deals with specialized tax matters. The subcommittee was considering the tax implications of PIK entitlements. Testimony was given by officials of the GAO, USDA, Treasury Department and farm interests.

An Accounting Office official disclosed that the GAO has asked Secretary of Agriculture John R. Block to advise what the USDA plans to do about the illegal payments exceeding $50,000 that have been given to the larger PIK recipients.

Besides South Lake Farms, Stark released the names of several other San Joaquin and Sacramento Valley farming interests that have reaped over $2 million each from PIK, including: C.J. Ritchie Farms, Visalia, $3,636,388; Hillside Farms, Chowchilla, $2,543,886; El Dorado Farms, Huron, $2,506,984; West Farmers, Visalia, $2,303,505; Pic Realty, Inc., $2,093,788, all cotton producers, and Zumwalt Farms, Colusa, $2,190,218, a rice producer.

The PIK program was set up to reinvigorate the farm economy by reducing surpluses, driving up prices, cutting government costs for farm subsidies and grain storage, and saving farmers production expenses. Farmers who receive commodities as payment for removing land from cultivation may sell the crops for cash or assign them as payment for goods such as farm equipment, which raises tax questions.

Upon Stark's request, the GAO compiled the report to "provide the Congress with a comprehensive assessment of the PIK program for its use in deliberating the 1985 farm bill."

The study surveyed 708 farms in nine states having the largest number of PIK participants. "On the average," it said, "each of the 708 farms . . . will receive commodities valued at $175,000. Of these 708 farms, 35 will receive commodities valued at over $500,000 each, including seven farms that will receive commodities valued at more than $2 million each. Also, of the 10 farms that were scheduled to receive the largest payments, eight were California cotton producers."

"Of the farms in our survey," the report continues, "those receiving the largest PIK payments are cotton farms in California. These are followed by California rice farms and midwestern corn farms. Texas cotton, Arkansas rice, and wheat and grain sorghum farms will receive PIK commodities valued at lesser amounts."

The report shows that 12 of 21 California farms surveyed will receive cotton valued at over $1 million, for a total of about $27 million, and the 26 California rice farms studied will each get rice valued at an average of $447,000, with four farms receiving payments exceeding $1 million each.

The report noted that federal farm program outlays have risen from $2.7 billion in 1980 to $11.6 billion in 1982, and, according to Agricultural Department estimates, will rise to $18.9 billion in 1983—"a sevenfold increase since 1980"—plus the $11 billion for PIK.

"This isn't cotton farming or rice farming," Stark said, "it's harvesting the grapes of wealth."

[Congressman Stark's News Letter, Nov. 2, 1983]

STARK SUPPORTS GAO LETTER TO AGRICULTURE FINDING LARGE PAYMENT-IN-KIND (PIK) OUTLAYS ILLEGAL

Rep. Fortney H. (Pete) Stark (D., CA), reported that on November 1, the GAO sent to the Secretary of Agriculture a legal opinion that the Department has been breaking the law by making Payment-In-Kind (PIK) outlays in excess of $50,000 to larger farmers.

Stark said: "Never has an Administration had its priorities so distorted. Not only are large PIK payments illegal. They are immoral."

Stark's Ways and Means Select Revenue Measures Subcommittee will hold a hearing on Thursday, November 3, on the PIK program, in which the GAO will detail how various farmers have received millions of dollars worth of PIK payments for literally doing nothing.

Said Stark: "I agree with the GAO. The failure to impose a cap is illegal. It is another example of how this Administration gives to the rich, in the hope that it might trickle down to the middle and low income. In farm terms, the Administration has decided to feed the sparrows in the field by giving the horses oats.

"The PIK program should have had a $50,000 cap. It would have cost the taxpayer less. It would have helped smaller farmers, and would not have contributed to the growth of agribusiness. And most of all, it would have been legal.

"In this era of record unemployment, homelessness, and hunger, the Administration has dragged its feet on distributing surplus food and has repeatedly slashed feeding programs for the truly needy. Yet under the PIK program, they have given over $3.6 million worth of commodities to just one farmer in Central California. That amount of money would have paid for the feeding of 8,080 individuals under the Women, Infant, and Children program (WIC) for one year! It would have paid for the feeding of 2,942 families or almost 9,000 people under the food stamp program for one year."

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[JOINT COMMITTEE PRINT]

DESCRIPTION OF THE ADMINISTRATION'S PAYMENT-IN-KIND (PIK) PROGRAM, INCLUDING TAX ISSUES RAISED BY THE PROGRAM

SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON
SELECT REVENUE MEASURES

OF THE

COMMITTEE ON WAYS AND MEANS

ON

NOVEMBER 3, 1983

PREPARED BY THE STAFF

OF THE

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NOVEMBER 2, 1983

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INTRODUCTION

The Subcommittee on Select Revenue Measures of the Committee on Ways and Means has scheduled a public hearing on November 3, 1983, on the Administration's payment-in-kind (PIK) program. The hearing will examine the effects of the 1983 PIK program and whether the special tax provisions enacted for participants in that program should be extended for participants in such programs for the 1984 crop year.

The first part of this document is a summary of the PIK programs and the special tax provisions enacted for the 1983 program. The second part is a description of the 1984 PIK program, announced by the Administration on August 9, 1983. The third part is a description of the 1983 PIK program. The fourth part provides data on participation in the 1983 program, and the fifth part is a description of the special tax provisions enacted for the 1983 PIK program.

I. SUMMARY

For the 1983 crop year, the Department of Agriculture adopted a payment-in-kind (PIK) program under which farmers were paid with commodities for diverting all or certain portions of their farmland from production. The 1983 crop year program applied to wheat, corn, sorghum, rice, and upland cotton.

The Agriculture Department has announced a continuation of this program for the 1984 crop year for wheat only. The Department also has announced that the program will not be continued for corn, grain sorghum, and upland cotton for the 1984 crop year. It is uncertain at this time whether the 1984 program will be continued for or expanded to other crops.

The Payment-in-Kind Tax Treatment Act of 1983 (the "1983 Act") [1] provided that income from commodities received in a 1983 PIK program is recognized on the date on which the commodities are sold rather than on the date the commodities are received (or constructively received). These special tax provisions generally applied only to crops grown in the 1983 crop year. When the PIK program was announced, USDA determined that the $50,000 limit on payments under acreage reduction programs did not apply to in-kind payments. On November 1, 1983, the General Accounting Office issued a determination that the limit does apply (see Appendix I).

Additionally, the 1983 Act generally treated income from PIK commodities as active income derived from the business of farming for all purposes under the Internal Revenue Code. For example, income from PIK commodities is treated as earned income to persons who materially participate in the conservation use to which the PIK real property is devoted for purposes of the self-employment income (SECA) tax, income tax credits, and the social security benefit provisions.

The 1983 Act also provided that real property withdrawn from production in exchange for a payment-in-kind under a 1983 PIK program is treated as used in an active farming (e.g., qualified) use by the person entering the PIK contract for purposes of the estate tax current use valuation and installment payment provisions. An individual who materially participates in the conservation use to which real property withdrawn from production under the 1983 PIK program is devoted is treated as materially participating in a farming operation in which the PIK property is used.

Under the 1983 Act, the treatment of PIK commodities as participant-produced crops also applies to commodities received by cooperatives under a PIK program. The Treasury Department was directed to prescribe rules treating commodities received under a

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[1] Public Law 98-4, March 11, 1983

PIK program by a cooperative as patronage source income from the sale of commodities produced by the cooperative's patrons.

The 1983 Act includes a special anti-speculation rule that limits the tax provisions to land acquired by any person before February 24, 1983, unless the acquisition occurs by reason of death, by reason of gift, or is from a member of the transferee's family. Under this rule, acquisition of an 80-percent or more interest in a crop from any land is treated as acquisition of the land.

Finally, the 1983 Act provided that a study of the effects of the PIK program and the tax treatment under the 1983 Act be required from the Secretary of the Treasury no later than September 1, 1983. As of the present date, that study has not been submitted to the Congress.

II. DESCRIPTION OF THE 1984 PAYMENT-IN-KIND PROGRAM

Overview

The Department of Agriculture's ("USDA") 1984 payment-in-kind program, announced August 9, 1983, is a program for diverting from production land which otherwise would be used to produce wheat. Under the program, producers are provided a quantity of wheat as compensation for diverting acreage normally planted in that crop.

The 1984 PIK program is in addition to the other established acreage limitation and paid land diversion programs available to farmers. The other programs provide for cash, rather than in-kind, payments. Farmers must be participants in these programs as a condition of eligibility for the PIK program.

In the case of the cash payment programs, present law limits payments to any farmer to a maximum of $50,000. When the PIK program was announced, USDA determined that the $50,000 limit on payments under acreage reduction programs did not apply to in-kind payments. On November 1, 1983, the General Accounting Office issued a determination that the limit does apply (see Appendix I).

The 1984 PIK program is similar in many respects to the 1983 PIK program (described in Part III). There are, however, three main differences between the 1984 and the 1983 programs: the 1984 program is limited to in-kind payments of wheat; in 1984 no payments will be made from Commodity Credit Corporation stocks—payments will be made only from commodities held under reserve loans, regular loans and "harvest-for-PIK" loans; and farmers will not be able to divert their whole crop acreage base in 1984, as was possible under the 1983 program.

PIK Program

General rules

Under the 1984 PIK program, farm producers generally may elect to divert from 10 to 20 percent of their wheat acreage base [1] from active crop production in exchange for a payment-in-kind equal to an established quantity of the wheat normally grown on the property. The established quantity is 75 percent of the farm's program yield [2] multiplied by the acres diverted under the PIK program.

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[1] The term "wheat acreage base" means the average of the acreage planted and considered planted to wheat in 1982 and 1983.

[2] The term "farm program yield" means the yield of wheat from the farm property during an established historical reference period.

Property withdrawn from crop production under a 1984 PIK program is required to be devoted to conservation uses. Land designated for conservation use must have been devoted to row crops or small grains in two of the last three years except for a summer fallow farm. Under the summer fallow rules the land must be acreage that would have been planted to small grains or row crops in 1984 absent the 1984 wheat program. PIK acreage may be grazed other than during the six principal growing months of the PIK crop. Harvesting of any crop from land diverted under a 1984 PIK program generally is prohibited.

Executed PIK contracts are transferable by the farmer under certain circumstances; however, transfer of a PIK contract could terminate the farmer's qualification for any special tax provisions that may be enacted, if the provisions enacted for the 1984 PIK program are similar to those that applied to the 1983 PIK program (discussed in Part III). Therefore, if special tax provisions are similar to those enacted for the 1983 program were enacted for the 1984 program, upon assignment of a PIK contract, the farmer would recognize income, which income would not be treated as income derived from the active conduct of farming.

Payment procedures

Participating farmers are eligible for payment-in-kind on a date established for their locality. The payment availability dates will reflect the usual harvest dates of wheat in different regions. Farmers may receive payment on the established availability date, or they may elect to defer receipt of the payment for any period of time up to 5 months thereafter. The Federal Government bears all risk of loss and storage costs until payment is received by the farmer.

In-kind payments of wheat are to be paid only from wheat acquired by the Federal Government through transactions the substance of which is forfeiture of collateral for regular and Farmer-owned Reserve[3] ("FOR") price support loans made under price support programs administered by the Commodity Credit Corporation ("CCC").[4] The regular CCC and FOR programs are similar, except CCC loans are normally made for a 9-month period while FOR stocks generally are held off the market for up to 5 years. In the case of payment from farm-stored FOR stocks, unlike the 1983 participants, farmers in the 1984 PIK program will not be eligible for additional storage costs beyond the normal 5 months allowed under the PIK program.

Producers with no outstanding loans must agree to harvest for PIK in order to receive a PIK payment, i.e., to grow their own PIK commodities on other land they farm. Price support loans will be made to farmers growing their own PIK. These loans will be secured by the commodities to be produced. Those producers with no outstanding loans who are unable to harvest for PIK will not receive a PIK payment.

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[3] A portion of the commodities will be acquired through transactions, the substance of which is loan cancellation, with farmers who have such loans outstanding immediately before they receive payments of commodities under the PIK program.

[4] The CCC is a Federally-owned corporation which administers the farm price support program through grants of loans on crops eligible for support. The CCC establishes an annual loan rate per unit for each crop eligible for Government price supports. CCC then makes nonrecourse loans to farmers for their crops based upon this rate. If the market price for the crop rises above the loan rate, the farmer can redeem the crop, sell it, and retain any excess proceeds over the loan rate plus accrued interest and other charges. If the market price does not rise above the loan rate before the loan's due date, the farmer can forfeit the crop to the Government in full satisfaction of the loan.

The method of payment under the PIK program takes the form of a three-step transaction. First, the farmer repays outstanding loans (reserve loans, regular loans, or harvest-for-PIK loans) equal to the PIK payment.[5] At that time, this collateral is released. Second, the Government repurchases the released commodities for an amount equal to the amount of the repaid loan (plus any accrued interest and charges paid by the farmer on repayment of the loan). Finally, the Government returns the commodities to the farmer as a payment-in-kind under the PIK contract.

Farmers may elect to have cooperatives receive payments otherwise due them provided the farmers have no outstanding CCC loans themselves. The payment procedures for cooperatives are generally the same as for individual farmers dealing directly with the Government. The cooperative's wheat loans must be used to satisfy the PIK requirements in the following order: reserve loans, regular loans and, finally, harvest-for-PIK loans. To meet the harvest-for-PIK requirement, the cooperative must obtain loans on eligible 1984 crop wheat to satisfy the designated PIK quantity in excess of outstanding reserve or regular loans. The cooperative will not be permitted to repay 1984 crop wheat loans unless a sufficient quantity of wheat remains under loan to satisfy PIK needs. PIK payments to cooperatives are to be held in pools separate from other crops held by the cooperatives.

Cash Payment Acreage Reduction Program

As under the 1983 PIK program, farmers are required to participate in the acreage limitation and paid diversion programs as a prerequisite of eligibility for the 1984 PIK program. These programs predate the PIK programs and consists of two facets. First, the farmer must divert from production an established percentage of his or her acreage base in exchange for diversion payments. The payment is a prescribed amount per crop unit times the farm program payment yield for each acre diverted. Second, the farmer must divert from production an additional percentage of his or her otherwise planted crop acreage for no pay. As with the so-called paid diversion, this no-pay percentage varies with the crop involved.

Under the 1984 wheat program, producers must limit 1984 wheat planted acreage to no more than 70 percent of the farm's wheat base (i.e., the acreage reduction requirement is 30 percent), and devote to conservation use an acreage of eligible cropland equal to 42.86 percent of the 1984 planted and PIK acreage.

Participation in the acreage reduction programs also entitles the farmer to price support loans and deficiency payments with respect to crops actually produced. The deficiency payments are equal to the excess of an established "target" price over the greater of the year's CCC loan value for the crop or the crop's national average market price. The 1984 target price for wheat is $4.45 per bushel and the national average loan rate is $3.30 per bushel.

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[5] Producers with reserve loans will be required to use those loans before a regular loan can be used. If a producer has more than one reserve loan, the producer may choose which reserve loan to repay.

III. DESCRIPTION OF THE 1983 PAYMENT-IN-KIND PROGRAM

Overview

The Department of Agriculture's 1983 payment-in-kind program was a program for diverting from production land which otherwise would be used to produce crops of wheat, corn, sorghum, rice, and upland cotton. Under the program, producers were provided a quantity of a commodity as compensation for diverting acreage normally planted in that commodity.

As with the 1984 program, the 1983 PIK program was in addition to the other established acreage reduction programs available to farmers. The other programs provide for cash, rather than in-kind, payments. Farmers must be participants in these cash payment programs as a condition of eligibility for the PIK program.

In the case of the cash payment programs, present law limits payments to any farmer to a maximum of $50,000. When the PIK program was announced, USDA determined that the $50,000 limit on payments under acreage reduction programs did not apply to in-kind payments. On November 1, 1983, the General Accounting Office issued a determination that the limit does apply (see Appendix I).

PIK Program

General rules

Under the PIK program, farm producers generally could elect to divert from 10 to 30 percent of their crop acreage base [1] from active crop production in exchange for a payment-in-kind equal to an established quantity of the commodity normally grown on the property. The established percentage was the farm's program yield [2] times 95 percent for wheat and 80 percent for corn, grain, sorghum, upland cotton, and rice multiplied by the PIK acreage.

In lieu of the guaranteed 10 to 30 percent PIK diversion election, farmers could elect to divert the whole crop acreage base (other than property in the other diversion programs) for the farm on a bid basis. If a whole crop bid was made, the farmer offered to reduce his or her planted acreage of the crop to zero. As part of the bid, the farmer specified the percentage of the farm's program yield that he or she would accept as compensation. The lowest bids were accepted first. If the whole base bid was accepted, the bid compensation rate applied to the entire PIK acreage. If the whole base bid was not accepted, the farmer was still entitled to PIK diversion of 10 to 30 percent of his or her crop acreage base at the established compensation rate for the crop involved.

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[1] The term "crop acreage base" means the acreage devoted to production of the crop involved during a base period. The crop base is presently established under the Omnibus Reconciliation Act of 1982.

[2] The term "farm program yield" means the yield of the crop covered by a PIK contract on the farm property during an established historical reference period.

Whether whole base PIK bids were accepted depended on the amount of property for which PIK elections were made in the county where the property was located. The total acreage withdrawn from production of a crop under all Federal Government land diversion programs could not exceed 50 percent (later changed to 45 percent) of the total acreage base for the crop in any county. All 10 to 30 percent elections were accepted before any whole base bids were accepted.

If a farmer had a crop base in more than one crop included in the PIK program, he or she could elect to utilize the program for any combination or all of the crops. The total crop base diverted could not, however, exceed the total acreage comprising the farm.

Property withdrawn from crop production under a 1983 PIK program was required to be devoted to conservation uses. Generally, this should have resulted in the property being planted with a cover crop to prevent erosion and otherwise being permitted to lie fallow. PIK acreage could be grazed other than during the six principal growing months of the PIK crop. Harvesting of any crop from land diverted under a 1983 PIK program generally was prohibited.

Executed PIK contracts are transferable by the farmer under certain circumstances; however, transfer of a PIK contract terminates the farmer's qualification for the special tax provisions, discussed in Part V. Therefore, upon assignment of a PIK contract, the farmer recognized income, which income was not treated as income derived from the active conduct of farming.

Payment procedures

Participating farmers were eligible for payment-in-kind on a date established for their locality. The payment dates ranged from June 1 for wheat in certain Southern areas to November 1 for corn in certain Northern States. The payment availability dates reflected the usual harvest dates of PIK crops in different regions. Farmers could receive payment on the established availability date, or they could elect to defer receipt of the payment for any period of time up to five months thereafter. The Federal Government bears all risk of loss and storage costs until payment is received by the farmer.

As USDA originally designed the 1983 PIK program, PIK commodities were to be paid from surplus commodities held by the Federal Government and from commodities held as collateral for outstanding loans. The Federal Government acquires these commodities through transactions the substance of which is forfeiture of collateral for regular and Farmer-owned Reserve ("FOR") price support loans made under price support programs administered by the Commodity Credit Corporation ("CCC"). For a more detailed description of the CCC and FOR programs, see Part II.

Because of higher than anticipated participation, in certain cases, the Department of Agriculture had to purchase crops grown in 1983 and other crops not held under existing loan arrangements to make 1983 PIK payments.

The method of payment under the PIK program varies, depending on whether the farmer has outstanding loans with the CCC or has grain in the FOR. If the farmer has no commodities pledged under these programs, he or she receives payment from Government stocks of the commodity involved. If the farmer has commodities pledged under either of the programs, the payment takes the form of a three-step transaction. First, the farmer repays an amount of his or her outstanding loans equal to the PIK payment. [3] At that time, a pro rata portion of the loan security is released. Second, the Government repurchases the released commodities for an amount equal to the amount of the repaid loan (plus any accrued interest and storage charges paid by the farmer on repayment of the loan). Finally, the Government returns the commodities to the farmer as a payment-in-kind under the PIK contract.

Special procedures for upland cotton and rice

Under the 1983 program, PIK payments of upland cotton and rice generally are made by the Government to a farmer's cooperative. If an upland cotton or rice producer markets his or her crop through a cooperative, the cooperative receives the payment otherwise due the farmer under the PIK contract. Other farmers could elect to have cooperatives receive payments otherwise due them provided the farmers have no outstanding CCC loans themselves. The payment procedures for cooperatives are the same as for individual farmers dealing directly with the Government.

Cash Payment Acreage Reduction Program

As stated in the Overview, farmers were required to participate in the acreage limitation and paid diversion programs as a prerequisite of eligibility for the PIK program. These programs predate the PIK program and consists of two facets. First, the farmer must divert from production an established percentage of his or her acreage base in exchange for diversion payments. This required percentage varies with the crop—wheat, feed grains, corn, rice, and upland cotton. The payment is a statutorily prescribed amount per crop unit times the farm program payment yield for each acre diverted.

Second, the farmer must divert from production an additional percentage of his or her otherwise planted crop acreage for no pay. As with the so-called paid diversion, this no-pay percentage varies with the crop involved (e.g., 10 percent of planted acreage for corn during the 1983 crop year.)

These two diversion requirements generally result in approximately 20 percent of the farmer's crop acreage base being withdrawn from production in addition to any land so withdrawn under the PIK program. As with acreage in the PIK program, property withdrawn under the cash payment program must be devoted to conservation use.

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[3] Except in the case of upland cotton, the farmer could choose which loans to repay. Cotton loans were required to be repaid in the order in which the crops under loan were produced.

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Participation in the acreage reduction programs also entitles the farmer to price support loans and deficiency payments with respect to crops actually produced. The deficiency payments are equal to the excess of an established "target" price over the greater of the year's CCC loan value for the crop or the crop's national average market price.

IV. OVERVIEW OF PARTICIPATION IN THE 1983 PAYMENT-IN-KIND PROGRAM

Participation

In January 1983, the Department of Agriculture estimated that 212 million acres of farmland would be planted in 1983 absent any acreage reduction or payment-in-kind program. To reduce planted acreage, and thereby anticipated crop surpluses, USDA adopted the 1983 PIK program.

Current estimates are that 80 million acres of farmland were in fact taken out of production in 1983 under the PIK and earlier acreage reduction programs. Of these 80 million acres, 11 million acres were taken out of production under acreage reduction programs by farmers who did not participate in a PIK program.

Farmers who participated in a PIK program were required to participate in the acreage limitation and paid diversion programs as a prerequisite of eligibility for a PIK program. Of the 69 million acres taken out of production by the farmers who participated in a PIK program, 48 million acres were taken out of production under the PIK program and 21 million acres under other acreage reduction programs.

The PIK program had been expected to result in a total acreage reduction of 21.6 million acres compared to 1983 planted acreage without PIK. Participation in the program was much greater than had been anticipated; the 48 million acres taken out of production under the PIK program is more than double the expected acreage reduction.

The enrollment in the 1983 PIK program, according to preliminary data, is shown in the following table. The enrollment ranged from 31.9 percent for wheat up to 74.2 percent for rice. Enrollment in the cotton program was also substantial at 62.3 percent.

PARTICIPATION IN THE 1983 PIK PROGRAM, BY CROP [1]

Crop	Farms enrolled in PIK[2] (number)	Total farms [2] (number)	Farms enrolled in PIK (Percent)
Wheat	298,522	936,785	31.9
Corn and grain sorghum	599,005	1,499,250	40.0
Cotton	85,665	137,536	62.3
Rice	16,271	21,937	74.2
Total	999,463	2,595,508	38.5

[1] Based on preliminary estimates of enrollment prepared by the General Accounting Office based on Department of Agricultural data.

[2] Farms that participated in the PIK program for more than one crop are included in the enrollment number for each crop. Thus, the total number of farms enrolled in the PIK program may be overstated to the extent farms are counted more than once.

Large Payments

Present law limits to $50,000 the total annual cash payments that can be made to any farmer under an acreage reduction program. When the PIK program was announced, USDA determined that the $50,000 limit on payments under acreage reduction programs did not apply to in-kind payments. On November 1, 1983, the General Accounting Office issued a determination that the limit does apply (see Appendix I).

Some commentators have pointed out that payments larger than those that would be permitted under cash acreage reduction programs have been made to some PIK participants.

In order to identify large PIK payments, the General Accounting Office reviewed payments to 708 farms in nine different States pursuant to a request by Subcommittee Chairman Stark. The farms were not selected statistically because sufficient data were not available for a statistically valid survey. The information from this limited review is useful, however, because it provides an indication of the number and size of some large PIK payments.

The average value of the commodities received on these 708 farms under the PIK program was $175,000. Thirty-five of the 708 farms received commodities valued in excess of $500,000. Of these 35 farms, seven farms received commodities valued in excess of $2,000,000.

In cases where a farm received payments for more than one crop, only the payment for the major crop was included in this data. Thus some of these farms may have received even larger amounts in total from all crops.

V. DESCRIPTION OF THE PAYMENT-IN-KIND TAX TREATMENT ACT OF 1983

Overview

The tax treatment of income from commodities produced by farmers is subject to numerous special rules under the Internal Revenue Code. Similarly, eligibility for a number of special income and estate tax provisions depends upon whether a taxpayer is (or a decedent was) either (1) engaged in the trade or business of farming, or (2) has income derived from the active conduct of the trade or business of farming.

Had the Payment-in-Kind Tax Treatment Act of 1983 (the "1983 Act") [1] not been enacted, participants in a 1983 PIK program could have been ineligible for many of the special income and estate tax provisions that are available to farmers since PIK commodities generally are not produced by the recipient in the active conduct of a farming operation. Even if such commodities are so produced, they have in effect been sold to the Government and returned to the PIK participant as consideration for withdrawal of farm land from production.

The 1983 Act modified the tax law to provide that participants in a 1983 PIK program generally are treated in a manner similar to that which would apply if they had actually grown the PIK commodities on the land withdrawn from production. Since the provisions of the 1983 Act apply only to land withdrawn from production during the 1983 crop year, payments received with respect to land withdrawn from production during the 1984 crop year generally will not be treated as income received from commodities produced by PIK participants in the active conduct of a farming operation.[2]

Income Tax Treatment of Farmers

Timing of income

Generally, taxpayers engaged in farming may determine their income for Federal income tax purposes under either the cash or accrual method of accounting. Under the cash method of accounting, income is recognized for the year in which it is actually or constructively received (Treas. reg. sec. 1.446-(c)(i)(ii)). Under the accrual method of accounting, income generally is recognized when all of the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy, regardless of when received. (Treas. reg., sec. 1.446-(c)(i)(ii)).

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[1] Public Law 98-4, March 11, 1983. H.R. 1296, a bill relating to the tax treatment of commodities received under the 1983 payment-in-kind program, was the subject of hearings on February 23, 1983 held by the Subcommittee on Select Revenue Measures of the Committee on Ways and Means. The bill, as amended, was reported by the Committee on Ways and Means on March 2, 1983 (H. Rept. 98-14). The House approved the bill on March 8, 1983 by a record vote of 401 to 1 under suspension of the rules. The Senate approved the bill on March 8, 1983 with amendments. On March 9, the House concurred in the Senate's amendment with amendment. On March 10, 1983, the Senate concurred in the House amendment, clearing the measure for the President.

[2] Winter wheat received as a PIK payment with regard to land withdrawn from production under a PIK program for the 1984 crop year remains eligible for the special treatment otherwise accorded only payments with respect to land withdrawn from production during the 1983 crop year. This rule applies only if the 1984 crop would have been planted before January 1, 1984, but for participation in a 1984 PIK program.

If a commodity is produced by a farmer, the farmer generally recognizes income only (1) when the commodity is sold or otherwise disposed of to a third party, or (2) when livestock, etc. to which a commodity is fed is sold or otherwise disposed of to a third party. Because the 1983 Act treats PIK commodities as farmer-produced, these rules apply to such commodities. Had the 1983 Act not been enacted, however, under both the cash and accrual methods of accounting, farmers would have recognized income when the commodities were made available to them regardless of when actually received. The amount to be included in income would have been the fair market value of the commodity on the date the taxpayer recognized the income.

Other income tax provisions

Under the 1983 Act, for all purposes of the Internal Revenue Code, income from the sale or exchange of PIK commodities is treated as income from the trade or business of farming and the taxpayer is treated as using in the trade or business of farming any land diverted from production under a 1983 PIK program. Thus, income with respect to the sale or exchange of such commodities is treated as gross income from farming for purposes such as the following:

(1) The special rules under which farmers may be excused from making quarterly payments of estimated tax if they file their returns and pay their tax in full by March 1 of the year following the year for which the quarterly estimates otherwise would have been required (secs. 6015(g), 6073(b), and 6153(b));

(2) The rules governing whether cash or accrual accounting methods must be used in determining income from farming (sec. 447);

(3) Provisions permitting expensing rather than capitalizing of certain expenditures for soil and water conservation (sec. 175), for fertilizer (sec. 180), and for clearing land (sec. 182);

(4) Restrictions on deducting certain expenses incurred in activities not engaged in for profit (sec. 183);

(5) Treatment of gain realized from disposition of property used in farming or farm losses offsetting farm income (sec. 1251);

(6) Limitations on the deduction of investment interest (sec. 163);

(7) The tax on the unrelated business income of charitable, etc., organizations (sec. 511); and

(8) The tax on personal holding companies (sec. 541).

Income tax treatment of cooperatives

A cooperative is an organization, usually operating in corporate form, which is established and operated for the mutual benefit of its members and patrons by selling goods to them or purchasing products for them and returning to them any income in excess of costs (subchapter T and sec. 521).

Unlike other corporations, a cooperative is allowed a deduction from its taxable income to the extent patronage source income is distributed to its members or patrons as patronage dividends or in redemption of a non-qualified written notice of allocation. In addition, a cooperative may exclude from gross income amounts attributable to qualified per-unit retain allocations and redemptions of non-qualified per-unit retain certificates.

Exempt farmers' cooperatives are allowed more beneficial tax treatment than other cooperatives in that they are allowed a deduction for dividends paid from nonpatronage source income and a deduction for certain amounts paid as dividends on their capital stock.

The 1983 Act treated income from commodities received on behalf of PIK participants as patronage source income which is deductible and excludible to both exempt and nonexempt cooperatives provided there is a duty to allocate the income from the sale or disposition of the PIK commodities.

Employment tax treatment of farmers

Self-employed farmers, like other self-employed individuals, are subject to the social security (SECA) tax on their net earnings. Only income realized from a farming operation in which the farmer "materially participates" is considered earned income subject to the SECA tax.

The 1983 Act provides that income from the sale or exchange of any PIK commodity will be subject to the SECA tax for any individual who materially participates in the diversion and devotion to conservation use required for the property withdrawn from production under the PIK program.

Estate tax treatment of farmers

The estate tax current use valuation provision and installment payment provision are available only in cases where property used in an active trade or business is included in the decedent's gross estate. The current use valuation provision requires that the decedent or a member of the decedent's family have materially participated for specified periods in the farming operation in which specially valued real property was used.

The current use valuation provision permits executors of decedents whose estates are comprised largely of real property used in the trade or business of farming to elect to value the real property for estate tax purposes based upon its current use rather than its full fair market value (sec. 2032A). The installment payment provision permits similarly situated estates to pay estate tax attributable to a closely held business in installments over up to 14 years (sec. 6166). In addition, certain amounts of the tax paid in installments under section 6166 accrues interest at a special 4 percent rate rather than at the higher deficiency rate otherwise applicable when payment of a tax is delayed (sec. 6601(j)).

The 1983 Act treats land withdrawn from production under a 1983 PIK program as used in the active trade or business of farming for purposes of these two estate tax provisions. In addition, material participation in the conservation use to which land withdrawn from production under a 1983 PIK program is put is treated as material participation for purposes of the current use valuation provision's requirement that such participation in the farming operation occur.

Taxpayers eligible for special tax treatment

Only qualified taxpayers are eligible for the special treatment accorded by the 1983 Act. A qualified taxpayer is a taxpayer who is a producer (as defined in Department of Agriculture regulations) of agricultural commodities within the meaning of a 1983 PIK program and who diverts farm acreage from production and devotes such acreage to a conservation use in return for receiving a commodity under the program. Thus, a taxpayer who receives income from assignment of a PIK contract or an assignee of such a contract is not a qualified taxpayer under the Act.

Anti-speculation rule

To prevent speculation in farm land as a result of a PIK program, the 1983 Act included a special anti-speculation rule that generally limits application of the special income and estate tax treatment accorded interests in property withdrawn from production to persons who owned the withdrawn property on February 23, 1983. Certain property interests acquired by reason of death, gift, or otherwise from a family member continue to qualify for the special treatment after the interests are transferred.

Treasury Study

The 1983 Act required the Secretary of the Treasury (after consultation with the Secretary of Agriculture) to conduct a study on the 1983 PIK program and the tax treatment accorded participants in the PIK program by the committee bill. The study was to include an analysis of the relative benefits accorded PIK participants by income class and by actual dollar amounts received for different crops and to address the relative income and tax benefits of the PIK program as compared to income and tax benefited that would have been received by owners of farm property had actual crop production occurred.

In addition, the study was to include an analysis of the cost-effectiveness of the PIK program as compared to other types of agricultural support programs, and also any effect that farmland diversion programs in general have on the cost-benefit analysis of other Federal Government programs, such as reclamation projects, which are frequently justified in part as increasing the amount of arable land available for farming.

APPENDIX I

U.S. General Accounting Office,
Washington, D.C., November 1, 1983.

Hon. John R. Block,
The Secretary of Agriculture.

Dear Mr. Secretary: We have many reviews ongoing in response to congressional interest in various aspects of the Department of Agriculture's 1983 Payment-In-Kind (PIK) program. Most of the reviews have been requested by committee or subcommittee chairmen. In addition to responding to specific congressional requests, we also plan to issue an overall report to the Congress in the summer of 1984 on the management and effectiveness of the 1983 program.

In regard to our overall effort, my staff asked our General Counsel for legal clarifications on three specific issues relating to the PIK program, including the applicability of the $50,000 payment limitation to PIK payments. In developing our position, our General Counsel reviewed and discussed the Department's legal position on the payment limitation with Department attorneys.

As the enclosed memorandum from our General Counsel to me states, we have concluded that the $50,000 limitation does apply to PIK payments. We would appreciate being advised of any views you may have and/or any actions you intend with regard to our legal opinion.

Sincerely yours,

J. Dexter Peach, *Director.*

Enclosure.

[Memorandum from the U.S. Government General Accounting Office, October 31, 1983]

To: Director, RCED.
From: Acting General Counsel—Harry R. Van Cleve.
Subject: Questions Regarding the Legality of the Payment-in-Kind Program (B-211462-O.M.; Code 022866).

This responds to questions posed by your staff regarding the authority of the Department of Agriculture and the Commodity Credit Corporation (CCC) to conduct the Payment-in-Kind (PIK) program.

The PIK program is a land diversion program established by regulations published on January 12, 1983. The program, conducted by the Department of Agriculture through the CCC, makes payments in the form of commodities to producers of wheat, feed grains, upland cotton, and rice to divert acreage from the production of those crops for the 1983 crop year and to devote that acreage to approved conservation uses. Payments to participating producers are made from existing stocks of CCC commodities. Also, CCC has acquired additional stocks of commodities specifically to meet PIK entitlements.

Your questions concerning the PIK program and our answers, in brief, are as follows:

Question 1. Does the Department of Agriculture have statutory authority to conduct a land diversion program featuring payments-in-kind rather than cash payments?

Answer. Yes. The authority of the Secretary of Agriculture under the Agricultural Act of 1949, as amended, to make land diversion payments to producers of wheat, feed grains, upland cotton, and rice, in conjunction with CCC's statutory authority, is sufficient to support a payment-in-kind program. The relevant statutory provisions do not define the term "payment" or specify a method of payment. The concept of "payment" generally is understood to encompass payments-in-kind as well as in cash. Nothing in the language or legislative history of the statues suggests that a more restrictive interpretation was intended for land diversion payments.

Question 2. Does the statutory $50,000 limitation on the total amount of payments a person may receive under programs for wheat, feed grains, upland cotton, and rice apply to payments in commodities by the CCC under the PIK program?

Answer. Yes. The term "payment" as used in the $50,000 limitation applies generally to land diversion "payments" under the Agricultural Act of 1949, as amended; it makes no distinction between payments in cash or in-kind. The statutory limitation and the authorization for land diversion payments must be read together. Thus, if commodities qualify under the authorization for land diversion "payments," as we believe they do, they are likewise subject to the $50,000 limitation on such "payments."

The Agriculture Department maintains that the limitation does not apply to in-kind payments because "a major focus" prompting its enactment was congressional concern over budgetary impacts—a concern which, in the Department's view, has no relevance to in-kind payments. However, the legislative history clearly, shows that Congress' concern went well beyond budgetary impacts; it evidences a more generalized intent to preclude what were perceived as inordiante and inequitable payments to any single producer. This concern seems just as relevant to in-kind payments. At the very least, the "focus" in the legislative history relied on by the Department is insufficient to justify reading into the limitation a distinction between cash and in-kind payments which is nowhere suggested in the statute itself.

In connection with out conclusion that the payment limitation does apply to payments in commodities under the PIK program, we must point out that the GAO does not have authority to render opinions binding on the CCC, or to take exception to its payments. Rather, CCC has authority under 15 U.S.C. § 714b to determine the character and necessity for its obligations and expenditures and to settle and adjust its accounts. See B-200103, March 5, 1983, B-200645, September 9, 1981. However, GAO under 31 U.S.C. § 9106 does have authority to report to Congress any activity or expenditure by the CCC which we regard as illegal. B-200103, March 5, 1981.

Question 3. Does the prohibition against the CCC reselling any of its stocks of wheat or feed grains at less than 110 percent of the then current price apply to the disposition of those commodities under the PIK program?

Answer. No. Transfer of commodities for PIK payments is not the transfer or property for valuable consideration necessary to constitute a sale.

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Chairman **Stark**. The subcommittee meets today in an oversight capacity to review the payment-in-kind or PIK program.

On February 23 of this year the subcommittee met to consider legislation to address the tax consequences of participation in the program. At that time the subcommittee expressed considerable concern over the lack of data on the cost of the PIK program, its impact on the farm community, the types of recipients of PIK payments and the size of individual PIK payments.

As a result of these concerns I requested the General Accounting Office to prepare a report for the subcommittee on the cost of the PIK program, the nature of individual PIK payments, and the overall effectiveness of the PIK program. The GAO has responded to these questions and will present a number of strong criticisms of the program.

At this time the Department of Agriculture has only announced a 1984 PIK program for wheat. It will be necessary for this subcommittee to once again consider the need for special tax consideration for those 1984 PIK payments.

It was the clear understanding and legislative intent of this committee to limit the tax deferrals to 1 year only and they will not be legal unless this committee acts to reinstate them. It is my hope this hearing today will give the subcommittee much of the data we were lacking when we first considered this issue.

At that time I expressed considerable concern over the fact that PIK payment in excess of the $50,000 statutory limit would be made to individual farmers. That fear proved correct.

The GAO has found payments to a single farmer worth $3.7 million, and that is at the Government's cost. When you calculate the value of the commodities given to that farmer tax free at today's prices for doing nothing the value is over $5 million.

Huge conglomerate corporations received millions of dollars in payments while foreclosures and farm depression continued to erode family farmers throughout the Nation. The $50,000 limit has always been a crucial mechanism for assuring that our farm assistance programs are targeted toward the average American farmer and are not pouring millions of dollars into the trough of giant farms and the corporate farming divisions of huge conglomerates.

It was, therefore, with great interest that I learned yesterday that the general counsel of the General Accounting Office has issued an opinion stating that PIK payments must comply with the $50,000 maximum payment. I agree with the GAO.

I want to know how we can make sure this kind of trickle down farm policy never happens again and how we can recover funds from some of the largest corporations and wealthiest farmers in America. Let me state for the record I am considering filing a suit on behalf of the taxpayers to recover these millions of dollars of illegal payments, and I hope all of the witnesses will discuss the situation at length.

I believe in the ideal of the family farm. I believe in helping the small businessman farmer. I believe PIK was an inefficient and a more costly than necessary way to help the farm economy.

Farm programs like PIK where millions of dollars are paid to a few for not working go against the grain and spirit of the American people. They destroy support for all farm programs even those which help the smaller farmers.

I hope the lessons we learn from this hearing will cause us in the Congress, in the Department of Agriculture, and in the farm community to never ever again propose such a ridiculous program. I would like to point out and it is with a great deal of sadness that in this very room earlier this week the administration opposed spending $10 million which affected 386,000 of the poorest families in this country.

They changed day care requirements which kicked 50,000 families with children off the assistance rolls. That cost $5 million.

The 75,000 full-time students in high school who passed the age of 18 lost their benefits and were unable to continue school. That cost $5 million. Thousands of people have lost aid to dependent children at a cost of $15 million.

For 45 million lousy dollars we affected thousands, 516,000 families in this country. The Secretary of Agriculture at the behest of the administration saved $3.5 billion by kicking 1 million working families off the food stamp program, and he enforced it vigorously.

They put a guy in jail in Maryland just last week. There is a $253 a month cap that a family of four could get out of food stamps. He has at the same time thrown away $10 to $15 billion worth of commodities.

He has given $20 million worth of them to seven very rich farmers in California, and we will hear more about that later. This is a clear-cut example of the administration's program of robbing the poor and giving $20 million to the seven or eight richest farmers in the United States tax free.

At this point we will hear from our first witness from the General Accounting Office, Mr. Crowley, but before that I would yield to my distinguished ranking member, Mr. Duncan.

Mr. DUNCAN. At the time we held hearings on this bill I certainly had reservations about it. I think your statement perhaps should be made to the majority of the Democratic Party. This bill was their favorite for the year and some of these things were raised in committee.

I think you did mention the $50,000 and you gave in and let the Department of Agriculture make that decision. It is very important. My State as far as I know didn't receive anything under the PIK program. We asked for two cows, but we did not get it. [Laughter.]

PIK is something I think is very important. We should get into it and set the rules. We did not mention this during the committee's hearing as far as commodities were concerned.

I think if we will be a little temperate in approaching this matter we might be able to settle it. If there are any to blame it is this committee and the Congress because we did not bring it out during the hearing or in the debate on the floor.

Chairman STARK. The gentleman's concern for the small family farm and equity in the Tax Code is well known to members of this committee and I know in his own, and I would certainly suggest there is indeed bipartisan blame if blame is a concern.

The Chair's aggravation is somewhat directed to the fact that I think this committee was horn swaggled. I think we were led down the primrose path to give tax deductions and exemptions to people who I am sure the testimony today will show do not need it. I do not think we like to be sold a bill of goods. I think we like to deliberate on the basis of equity and fairness, and I think we will continue to do that.

I appreciate the gentleman's comments.

Mr. **Duncan**. Thank you, Mr. Chairman.

Mr. **Dorgan**. Mr. Chairman.

Chairman **Stark**. Mr. Dorgan.

Mr. **Dorgan**. Thank you, Mr. Chairman.

If I might say a few words, Mr. Chairman, in light of the opening comments offered to the committee, I would do so. The PIK program was a response, and I think a serious one by the administration last year, to a very, very serious problem in the farm belt.

The result of the PIK program I think has been much less than had been predicted by the administration. The cost has been much, much greater than had been predicted, probably four or five times the cost estimated to Congress, and I think more than that the result of the PIK program is embarrassing to many of us who come here intent on doing what we perceive as being in the best interests of family farmers.

I do not think it is useful at this point to try to determine who was at fault or who sold whom a bill of goods. My interest is in determining what we can do to make sure that the family farmers in this country have an opportunity to survive.

I would like at the start of the hearing to describe why we have a farm department. The Agriculture Department was started under Abraham Lincoln. We have had concern for farmers for quite a while. It is the only occupation I know of where the product these folks raise is subject to the most vicious ups and downs in an international grains market that anyone's product has ever been subject to.

As a result of that we have tried to build a small bridge for family sized units to get across those deep price valleys in the international grain movement. That is precisely why we've had a farm program in the past. It is precisely why we will need one in the future.

A PIK program, unfortunately, provides the biggest benefit to those who need them least, the largest farming enterprises in America. I think it poisons the well for those of us who want to push good farm legislation through Congress because it tells folks from urban districts that we are interested in having farm programs that give precious tax dollars to farm producers in this country who are some of the largest producers and who have no need for that kind of protection. We have reports on the farms that have received these benefits—$1 million or $2 million benefits to Shell, Tenneco, Chevron, and so on.

In North Dakota we have not had corporate farms. State law prevents that. Our farmers are named Christianson, Larson, Johnson, and in the German area, Schmitz and Schmultz. Those are the farmers that need help. Those are the family farmers, and yet the PIK program gives the biggest benefits to those who need them least.

That is what I think is so fundamentally wrong with the PIK program. The whole notion of supply management is simply chasing your tail—under this theory, you have to give the biggest benefits of any program designed to control supply to the biggest producers. That is what has happened in the PIK program and that is what is fundamentally wrong. It is a tragic waste of the taxpayers' resources to give $1 million or $2 million in tax benefits, $1 million or $2 million in PIK certificates to corporations that are multinational conglomerate farming enterprises, while we have a lot of good young folks being driven off the farm in the midwestern part of America. That makes no sense at all and I will represent what I think is the best interest of family farmers, but by God, it is not the PIK program. I will tell you that.

Chairman **Stark**. I thank the gentleman.

At this time our first witness is Mr. Brian P. Crowley who is the Senior Associate Director of Resources, Community and Economic Development Division of the U.S. General Accounting Office.

Mr. Crowley, you have a long statement and without objection it will appear in the record with all of its attachments in its entirety. You may proceed.

I know some of your statement you intend to paraphrase. You may proceed in any fashion you see fit.

STATEMENT OF BRIAN P. CROWLEY, SENIOR ASSOCIATE DIRECTOR, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY HENRY R. WRAY, ASSISTANT GENERAL COUNSEL; KEITH FULTZ, SENIOR GROUP DIRECTOR; AND CHET JANIK, EVALUATOR

Mr. **Crowley**. Yes, I do, Mr. Chairman. I have a summary of this which will last about 10 minutes. Before I start, Mr. Chairman, let me introduce the people with me at the head table.

On my left is Mr. Henry Wray, an Assistant General Counsel in our Office of General Counsel. To my immediate right is Keith Fultz. He is in charge of our Department of Agriculture audit side and to my far right is Chet Janik, the evaluator who is in charge of most of the work we will be discussing today.

Mr. Chairman, my statement does not include much information about the $50,000 payment limitation. Mr. Wray and myself will be happy to respond to any questions with regard to our legal opinion to the extent we can after I am through with my statement.

Mr. Chairman, we are glad to be here today at your request to discuss a number of issues pertaining to the Department of Agriculture's 1983 PIK program. We have several reviews ongoing of various aspects of the Department's program and will be reporting on their results over the next several months.

We also plan to issue a report to the Congress in the summer of 1984 on the overall management and effectiveness of the 1983 PIK program. Our objective is to provide the Congress with a comprehensive assessment of the PIK program for its use in deliberating the 1985 farm bill.

The issues we will be discussing today will be further developed as we continue our overall assessment of the PIK program. The Department announced the PIK program in January 1983, as you mentioned, in response to trends that had been evolving in the agricultural sector since 1980.

These trends included record harvests and decreased domestic and foreign demand. This resulted in low commodity prices for producers, decreased farm incomes and a large buildup of Government and producer-owned grain and cotton stocks.

These trends had required the Department to increase its farm program outlays fourfold between 1980 and 1982. They went from $2.7 billion to $11.6 billion. Potential outlays for 1983 were estimated at $18.9 billion or seven times that of 1980.

Because of this situation the Department had some difficult decisions to make regarding a 1983 farm program. The Department's response was PIK. The program covers wheat, corn, grain sorghum, rice, and cotton.

After it became apparent that there would be a high level of PIK participation by producers, you asked us to estimate the cost to the Department of the 1983 program, identify farms that would receive large PIK payments and review the reasonableness of the Department's estimated budget savings attributable to PIK.

Let me briefly give you some background on farm programs and then highlight our findings. The Department of Agriculture uses a number of farm programs to try to stabilize farm commodity prices and income.

The three major programs have been supply control, direct payment, and price support programs including commodities held in the reserve program. The Department's decision to implement a PIK program was partially the result of the farm programs not meeting their objectives.

Chairman STARK. Mr. Crowley, I will interrupt you at this point if I may.

Mr. CROWLEY. Yes, sir.

Chairman STARK. You skipped over page 3 of your statement, and I would like to ask you specifically to include 7 farms that received commodities valued at more than $2 million and 10 farms scheduled to receive the largest payment. Do you have a list of those farms with you?

Mr. CROWLEY. Yes, I do.

Chairman STARK. Will you present them to the committee?

Mr. CROWLEY. I will give them to you.

Chairman STARK. They are public record are they not?

Mr. CROWLEY. The Department told us yesterday there may be some legal restrictions on release of the information. You might want to explore it with them, but I do have the information to give you.

Chairman STARK. Do you have the names of the 708 farms the staff reviewed at the office?

Mr. CROWLEY. Yes, sir.

Chairman STARK. Is that public record? Is that a part of the GAO, is it not?

Mr. CROWLEY. It——

Mr. DUNCAN. Will the chairman yield?

Chairman STARK. In just a moment I will.

Mr. CROWLEY. If you would like to make it that, yes.

Chairman STARK. I would like to make the entire report and the working documents part of the record. I would like to have them submitted for the record and state that they will be available at the General Accounting Office for the press or anybody who wants to see them as all public records should be.

One other question, you estimate the PIK costs in your report several times. Is it not true that the value of your commodities in your entire report are estimated on the cost to the Government.

Mr. CROWLEY. Cost to the Government, yes, sir.

Chairman STARK. Which may be in many cases lower than the actual value in the market today, is that correct?

Mr. CROWLEY. That is correct, sir.

Chairman STARK. Would it be fair to say that a farmer who got $3.7 million of PIK commodities in the way you calculated that value might really have received commodities, cotton particularly, worth about $5 million if it were sold at the market price today.

Mr. CROWLEY. That would depend on the market. That is a fair estimate.

Chairman STARK. Also you estimate the cost of all PIK commodities at $9.3 billion.

Mr. CROWLEY. Yes, sir.

Chairman STARK. What would you estimate the current value of that $9.3 billion in commodities would be at today's market. Could you hit a ball park figure on that?

Mr. CROWLEY. We did get Wall Street Journal market prices as of November 1 for corn, sorghum, wheat, and cotton. We do not have a comparable price for rice, not the rice being given out. The corn, sorghum, wheat, and cotton account for about $9 billion in cost. The market value of the $9 billion on November 1 would be about $11 billion, so it would be up about $2 billion.

Chairman STARK. Thank you very much.

Mr. DUNCAN. Mr. Crowley, in relation to the chairman's request I would like to ask you do you have the information concerning the highest and lowest payments in all the States and who they were?

Mr. CROWLEY. Mr. Duncan, the information on individual payments is located at ASCS local county offices. We have no master list of them.

Mr. DUNCAN. You have 708 farms.

Mr. CROWLEY. That is true.

Mr. DUNCAN. Those farms would have actually been paid about 10 percent of the total payout? I think we should know where the payments went because these farms have only a small percentage of it.

Mr. CROWLEY. I think that is probably right.

Mr. DUNCAN. I think the committee is entitled to that information for all of the States and on the payments say above $50,000 which is a lot of money in my State.

Mr. CROWLEY. Our information is only for the nine States we reviewed. We had to get our information at the local county level. There is no master listing.

Chairman STARK. You used all public records, did you not, Mr. Crowley?

Mr. CROWLEY. Yes.

Chairman STARK. Is it your opinion there is no legal problem in making these names public?

Mr. CROWLEY. I will turn that over to my attorney.

Mr. DUNCAN. If I may ask one other question—what States did you survey?

Mr. CROWLEY. We surveyed Arkansas, California, Kansas, Illinois, Iowa, Nebraska, North Dakota, Oklahoma, and Texas.

Chairman STARK. I just wanted to make this clear. Do you want to comment on the legal opinion?

Mr. WRAY. I just want to make absolutely sure that the information is publicly available. I could not tell you myself. I think we would want to check with Agriculture to make sure.

Chairman STARK. Could I ask the man who gathered most of this information did you get all of the information for the report from public records that were open to any citizen?

Mr. JANIK. Yes, we did. Most of the information came from the county office officials.

Chairman STARK. So if it is available to any citizen in any county record there would be no reason why this could not be made public.

Mr. WRAY. Certainly, but I understand Agriculture may have some reservation about making the information public. Perhaps they could speak to that.

Mr. DORGAN. Mr. Chairman.

Chairman STARK. Mr. Dorgan.

Mr. DORGAN. Let me underscore the point you just made. As I understand it the record you have developed for the committee were records you received at the local ASCS office. I do not think anyone in this room would try to lead us to believe that those records are protected in any way by confidentiality.

Chairman STARK. I would ask at this point if there is anyone here from Agriculture who would like to make the stand that any of this information not be available to the public. If so, let them speak now.

Mr. DUNCAN. Mr. Chairman, I cannot see why all of it would not be available, and I would like to have submitted for the record all payments above $50,000.

Chairman STARK. I know they are trying to develop that, Mr. Duncan, and that will take a long time.

Mr. DUNCAN. But we can pick out 700.

Chairman STARK. They are continuing to do that.

Mr. DUNCAN. It is certainly something to talk about, but we are overlooking 90 percent of the payments for that.

Chairman STARK. If the gentleman will yield, they are working on that. I think we will find later the Department of Agriculture is unable to come up with that information yet.

It will be made available to this committee through the GAO as soon as it is available. The 708 names they now have will be available to this committee and the press at the GAO office at the conclusion of this hearing, and it is the intention of the Chair——

Mr. CROWLEY. Well, it may take some work to get all the names together, Mr. Chairman.

Chairman STARK. OK. I am sure the press will help you.

Mr. CROWLEY. They have already offered. [Laughter.]

Let me just impress upon you one point. The 708 is a sample. It is a judgmental sample. We had to get some trends out there to see if we could find large payments. That is how we got the 708. We do not know that we have all of the large payments in the country.

Mr. DUNCAN. What is a judgmental sample?

Mr. CROWLEY. We do not know if we have a representative sample.

Mr. DUNCAN. What is a judgmental sample?

Mr. CROWLEY. We selected the largest PIK States, the States getting the largest PIK payments. Within those States we identifed the counties getting the largest payments and within the counties we contacted the ASCS local people and asked them to give us the names of the three largest PIK recipients.

Mr. DUNCAN. Which States were they?

Mr. CROWLEY. The same nine States I mentioned before.

Mr. DUNCAN. In other words, you had some large payments in all of the nine States.

Mr. CROWLEY. These States received the largest PIK payments or will receive the largest PIK payments.

Chairman STARK. Before Mr. Crowley continues we take credit for this in California I am afraid. I could go down very quickly so the committee can have the information that is available to the Chair at this point.

In California, starting with the largest, the first are all cotton producers. The C. J. Ritchie Farms are receiving market value of cotton worth a little over $5 million.

The Hillside Farms, with the owner listed as Stephen Henry Hall, are receiving $3.5 million approximately market value. The El Dorado Farms, a partnership of Minami and Minami Yataro Minami and Isamu Minami, are going to get about $3.3 million in cotton.

The South Lake Farms, owned by the Lunger Bangor Punta Corp., will receive about $3.18 million in corporate payments. The West Farmers of Visalia, Calif., $3.18 million—excuse me, $2.891 million and $3.18 million. Bangor Punta gets $1.38 million and Pic Realty, my good friends, it turns out is a Prudential Insurance Co. realty and they got a piece of the rock to the tune of $2.891 million.

So this was shared, and there is a rice farmer named "Zumwalt" in Colusa, Calif., who got about $2.19 million in cost. We do not know what the market value of that would be.

But California shares the responsibility for getting the most generous proportion of this, and I wanted to give the committee members some idea of the size we are dealing with.

Mr. Crowley, would you proceed?

Mr. CROWLEY. Where was I?

[Pause.]

Mr. CROWLEY. The Department's decision to implement a PIK program——

Chairman STARK. What page are you on?

Mr. CROWLEY. I am on page 5, sir. I will be skipping around.

Chairman STARK. All right, proceed.

Mr. CROWLEY. The Department's decision to implement a PIK program is partly a result of the farm programs' not meeting their objectives of stabilizing farm prices during the last few years. This occurred because of record harvests in the United States, decreased demand in both the United States and abroad, and increased foreign production.

By the end of 1982 crop year ending rice stocks had quadrupled their level of 2 years earlier; grain sorghum, corn, and cotton stocks had tripled; wheat stocks had increased about 60 percent. The initial 1983 acreage reduction and paid land diversion programs which the Congress mandated in the Omnibus Budget Reconciliation Act of 1982 were aimed at taking more land out of production than in 1982.

However, it became evident soon after these programs were announced that Federal outlays would increase to $18.9 billion. The 1983 PIK program was a supplemental program to the acreage reduction and paid land diversion programs.

To be eligible to participate in PIK, producers had to enroll in these earlier announced programs. Producers who agree to take an additional 10 to 30 percent of their acreage or in some cases their entire acreage out of production were to receive a certain percentage of the commodities, they would have otherwise planted and harvested as a result of the various aspects of the 1983 farm programs. Producers took out of production about 80 million of the approximately 212 million acres expected to be planted in wheat, corn, grain sorghum, rice, and cotton.

Of the 80 million acres about 11 million acres were taken out on farms that did not participate in PIK but did participate in the earlier announced acreage reduction and paid land diversion programs. On the other 69 million acres about 48 million acres represent PIK acres and the remaining 21 acres represent acres taken out of production by PIK participants under the acreage reduction and paid land diversion programs.

I am skipping to page 9. On the basis——

Chairman STARK. You are skipping all of the good parts. [Laughter.]

I just wanted to explore——

Mr. CROWLEY. I will get into them later.

Chairman STARK. I wanted to explore a little bitty paragraph on page 8.

Mr. CROWLEY. Certainly.

Chairman STARK. It said that after purchasing the commodities the Department did not have sufficient stocks of wheat and cotton to meet all of its PIK obligations.

Mr. CROWLEY. That is true.

Chairman STARK. They had a program called harvest for PIK to meet its wheat and cotton PIK obligations. Is it a correct if somewhat naive assumption to say that the Government found itself in the position of going to the PIK participants and asking them to grow some more corn or cotton or something at a slightly higher price to provide the very products which were going to be given to the PIK people who were prompted not to plant so they could be in the PIK program?

I mean were we kind of hoisted on our own petard in the PIK program?

Mr. CROWLEY. As I said the Department did have some very difficult decisions to face. There were agreements with individual farmers to use some of the corn or wheat—I think it was just wheat and cotton—they planted as their PIK payment.

Now they had to still idle land and they had to participate in the other diversion programs.

Mr. **Fultz**. I would like to add one thing to that. The Department anticipated taking approximately 23 million acres out of production as a result of PIK. However, because of the substantial interest in the program approximately 48 million acres were taken out of production as a result directly related to PIK.

Chairman **Stark**. The participation was far beyond the plan.

Mr. **Fultz**. That is correct.

Mr. **Crowley**. Yes, it was.

Chairman **Stark**. I am sorry, Mr. Crowley. Proceed to page 9 as you intended.

Mr. **Crowley**. All right.

On the basis of the Department's estimated PIK needs for corn, grain sorghum, wheat and rice as of August 29, 1983 and cotton as of September 9, 1983 we calculate that the 1983 PIK program will cost the Department between $10 billion and $11 billion. Nearly all of these costs represent Government assets given up to meet PIK payment obligations to producers and for the most part have not directly affected fiscal year 1983 budget outlays.

The assets given up include, for example, commodities under Government loans and Government owned commodities. However, it should be noted that these assets will be written off by CCC and included in net realized losses due CCC.

As such CCC may eventually have to be reimbursed for these losses in budget outlays in future fiscal years.

Mr. **Schulze**. You do not have the authority over CCC that you do over the Agriculture Department. Is that correct?

In other words, you feel now based upon your legal opinion that you could direct the Secretary of Agriculture not to spend any funds appropriated to the Department of Agriculture or he would have to make them up out of his own pocket. You do not have that same authority over the CCC. Is that correct?

Mr. **Crowley**. I will let Mr. Wray answer that.

Mr. **Wray**. It is correct. We do not have settlement authority over the CCC. We could not in any event even direct the Secretary of Agriculture not to make payments or hold him personally liable.

Our remedy in the case of the Department of Agriculture would be to take exception of the accounts of an accountable officer who certifies certain payments.

Chairman **Stark**. They have not found that if they spend money contrary to law there is personal liability for those funds?

Mr. **Wray**. Not within the scope of any GAO authority or exception authority; our settlement authority is limited.

Chairman **Stark**. Do you think if they continue to make the payments over $50,000 from the Department of Agriculture instead of CCC you could have effectively remedied that?

Mr. **Wray**. I would not call it a very effective remedy to tell you the truth.

Chairman **Stark**. All right.

Mr. **Crowley**. The cost elements used in making our estimate are shown on page 10 of my statement. A cost range is presented because three elements used in determining PIK cost: storage cost, diversion payments and potential interest forgiven can vary.

I would caution you that PIK estimates fluctuated most severely and will continue to do so probably. As a result the costs will vary until final PIK obligation data is available.

Let me also emphasize there will most likely be future budget savings as a result of PIK, and I will address that later. As you can see in the table the largest cost element is the cost of the commodities.

We valued the commodities at CCC's cost which varies depending upon the source of the commodities. An alternative method of valuing the PIK commodities is at current market values.

However, it is difficult to determine market values because many producers have not yet taken possession of their commodities, and market values vary by geographical areas. Our methodology, a detailed breakdown of the estimated cost of the PIK commodities and our reasons for not using market values are discussed in appendix 1 to my statement.

Appendices 2, 3 and 4 describe fully the other cost elements. I will skip to page 16, Mr. Chairman, unless you have a question in between.

To respond to your request on large PIK payments it was necessary for us to survey selected counties because information on individual PIK payments is not expected to be available on a nationwide basis until February 1984. The counties and farms we surveyed were judgmentally rather than statistically selected.

Because our objective was to identify large PIK payments we identified States having the largest total quantities of PIK entitlements for each commodity. We then selected and ranked in order two States each for cotton and rice, four States for wheat and five States for corn and grain sorghum.

We ended up with a total of nine States because some of these were largest for more than one commodity. We further selected counties in these States that had either the largest producers or the largest farms that put their entire base acreage under PIK.

We ended up with 170 counties. We asked the Agricultural Stabilization and Conservation Services Office in each county to provide information on up to three largest PIK payments by crop in its county. This resulted in collecting information on 708 farms.

Our survey procedures on the large PIK payments is in appendix 5. Our survey results should not be interpreted as including all such large PIK payments, nor on the other hand should they be interpreted as being representative of all PIK payments.

Each of the 708 farms surveyed will receive commodities valued at an average of $175,000; 35 will receive commodities valued at over $500,000. Of the 35, 7 will each receive commodities valued at more than $2 million. Six of the seven are California cotton farms, and one is a California rice farm as you indicated before.

Of the farms in our survey those receiving the largest PIK payments are cotton farms in California followed by California rice farms and Midwestern corn farms, Texas cotton, Arkansas rice, and wheat and grain sorghum farms will receive PIK payments valued at lesser amounts.

Chairman **Stark**. Why, if I may interrupt for a moment, does cotton sort of come out king of gain and how does California get so lucky? In February there was an estimate—I am quoting here—that a high yield 5,000 acre farm in California or Arizona could make $1 million by joining the program compared with making $368,000 by remaining in full production.

Could the Department not have tightened up the rules to keep that from happening before the program began?

Mr. **Crowley**. As I said at the beginning of my statement we have other reviews ongoing where we are looking into questions such as the basis for some of the amounts given out and whether there is a better way now to do it, should we have to go into other PIK programs. But quite frankly, they were very large farms and they ended up in the sample because they were large.

Chairman **Stark**. I also noticed in the papers that a Mr. Rank, the Administrator of the Agricultural Stabilization Service was a partner in a cotton farm in California that got about $1 million worth of PIK cotton, and he says he has worked out a deal whereby he will not personally profit from this.

Have you looked into that and have you looked into whether there are any other USDA employees or officials who are the recipient of PIK benefits?

Mr. **Crowley**. No, we have not, sir.

Chairman **Stark**. Would that come up through the Auditor General within the Department of Agriculture? Excuse me, did you want to comment on that?

Mr. **Fultz**. Yes. The Office of Inspector General of USDA has, to my understanding, done a study in that regard.

Chairman **Stark**. Would the results of that study be public or available?

Mr. **Fultz**. I would suppose so, yes.

Mr. **Crowley**. I think there was an article in the paper this morning.

Mr. **Duncan**. I wonder if that would cover Members of Congress who also own farms.

Mr. **Crowley**. Pardon me?

Mr. **Duncan**. I wonder if that would cover Members of Congress who also own farms in the surveyed States.

Mr. **Fultz**. My understanding is that it was for Agriculture Department employees only.

Mr. **Duncan**. A great number of our colleagues do own farms in the farm belt.

We thank you.

Chairman **Stark**. Proceed.

Mr. **Crowley**. I was going to skip the next two paragraphs. There is a lot of detailed information there. At your request, Mr. Chairman, we also identified from the 708 farms in our survey the three largest PIK payments for each of the five PIK crops including the payments the producers will receive from other PIK crops on their farms or from other farms enrolled in PIK.

Of these 15 producers 13 have other PIK crops on their farms or other farms enrolled in PIK that will increase their PIK payments. For example, the largest payment we identified would go to a corporation operating a California cotton farm.

The corporation will receive nearly 14,000 bales of cotton costing about $3.6 million. The corporation will also receive about 29,000 bushels of wheat costing nearly $115,000 increasing the total PIK payment to about $3.7 million.

In another case a corporation operating a Nebraska farm will receive 701,200 bushels of corn valued at about $2 million. The corporation also operates three other farms enrolled in PIK located in Texas and Arkansas, and will receive nearly 234,600 bushels of wheat and 193,600 bushels of corn for these farms.

Chairman STARK. What is the name of that corporation, Mr. Crowley? Let's spread the wealth outside of California here.

[Pause.]

Mr. CROWLEY. It is National Farms in Atkinson, Nebr.

Chairman STARK. Thank you very much.

Mr. CROWLEY. More detailed information on the PIK costs associated with these 15 producers is shown in the second table in appendix 5. As mentioned earlier, Mr. Chairman, budgetary savings will most likely occur as a result of PIK.

In the President's midsession budget session of July 15, 1983, the Department states a 2-year PIK program will result in about $14.9 billion in savings through fiscal year 1986. The Department's estimate is based upon a comparison of estimated program outlays through the fiscal year 1986 as a result of a 2-year PIK program and the originally announced 1983 farm program which did not include PIK.

Since July the Department has revised its 1984 PIK program plans and as a result of the revisions already made the program estimates and potential savings made in July will need to be revised. A breakdown of the Department's budget savings estimated in July is as follows: $3 billion of the estimated savings represents lower producer storage payments; $3.4 billion represents lower diversion payments; $7.1 billion represents a reduction in deficiency payments; the other $1.4 billion in estimated savings represents a reduction in net lending on loans and less costs for handling and transportation of commodities.

Budget estimates on farm program costs are very difficult to project because of the uncertainty surrounding the agricultural sector of the economy. These uncertainties involve weather conditions which have an enormous impact on crop production; domestic and foreign demand for our agricultural commodities; foreign production of commodities; the strength or weakness of the dollar; and legislative and administrative changes affecting farm programs.

Of the areas covered in the Department's estimates, storage, net lending and the handling and transportation of commodities appear to offer the potential for savings. However, we have concerns about the Department's assumptions on diversion and deficiency payments. On diversion payments the Department assumed that with PIK a paid diversion program would not be needed in 1984, 1985, and 1986 and that the Congress would not legislate a paid diversion program.

However, increased commodity prices brought on by a combination of PIK and the drought could provide producers with the incentive to increase plantings in crop year 1984 and beyond which could result in large harvests in future years. Under this scenario if a paid land diversion program is needed or legislated the savings for diversion as a result of the PIK program may be negated.

Our concerns with the projected deficiency payment savings stem from the fact that the two programs the Department compared, the PIK program and the originally announced land diversion program, are not analyzed on the same basis. In analyzing the PIK option, the Department assumed Congress would comply with its request to repeal higher target prices currently scheduled to go into effect through 1985 and freeze them at the lower 1983 levels. This would result in lower deficiency payments.

In analyzing the non-PIK option the Department assumed that higher target prices established by law would stay in effect. This would result in higher deficiency payments.

Department officials recently told us that $4 billion of the $7.1 billion deficiency savings is not a result from PIK but a result of anticipated frozen target prices.

As I indicated at the outset of my statement we will be continuing our analysis of the PIK program building on the information we have developed to date. That concludes my prepared statement.

My colleagues and I would be happy to respond to any additional questions you might have.

Chairman STARK. Mr. Crowley, thank you very much.

Mr. Flippo, did you wish to inquire of the GAO?

Mr. FLIPPO. Yes, Mr. Chairman, I did have a question or two.

I wondered when you started with this investigation what did you start out, did you make an assumption of what the purpose of the PIK program was?

Mr. CROWLEY. We went with the Department's objectives for it which is stated on page 6 of my statement.

> The program's overall objectives are to reduce commodities, reduce surplus commodity stocks, increase commodity prices and avoid increased budget outlays that would otherwise be necessary under existing farm programs.

We were asked to respond to specific questions the chairman asked us. Our assumptions were to try to gather the information we were requested to get.

Mr. FLIPPO. Did you make any judgments about whether the program reduced production or increased prices?

Mr. CROWLEY. No, sir. We did not. It is a little early to do that. I think the only program on which there is much information right now might be wheat.

Mr. FLIPPO. Did you make a judgment as to whether or not the program was effective in removing land from production?

Mr. CROWLEY. It did remove land from production, yes, sir.

Mr. FLIPPO. Did you make any judgment as to whether or not it increased any prices, spot prices of cotton?

Mr. CROWLEY. No, sir. We did not. The situation is complicated by the drought. I think the Department has made some estimates as to what the reduction in total production will be this year as a result of the drought.

Mr. FLIPPO. The drought certainly contributed I guess.

In your judgment did the reduced acreage contribute anything to increased prices for cotton?

Mr. **Crowley**. I would have to guess and say I think it did, but I do not know.

Mr. **Flippo**. You think that it did.

Mr. **Crowley**. You have my personal opinion on that.

Mr. **Flippo**. Did you make any calculations about the percentage of cotton acreage that was produced or the bales of cotton produced by the 708 farms we are talking about? Did they receive a disproportionate share of the total payments for PIK?

Mr. **Crowley**. In California I do have some statistics I skipped over in reading my statement. Back over on page 18 we state that we obtained PIK information for 21 of the approximately 4,000 California cotton farmers enrolled in PIK.

Twelve of the farms will receive cotton valued at over $1 million and all 21 farms will receive cotton valued at a total of about $27 million. The 21 California cotton farms represent about one-half of 1 percent of total California cotton farms enrolled in PIK, yet they will receive almost 13 percent of the PIK cotton payments due in California.

Mr. **Flippo**. In California, among the total 708 that you examined that participated in the program would they receive a disproportionate share? In other words, if they were farming 80 percent of the cotton acreage would they have received more than 80 percent of the PIK payments?

Mr. **Crowley**. We do not have information on that, sir.

Mr. **Flippo**. Well, Mr. Chairman, I guess I have taken enough time, but we can see what is happening here in some of the larger farms. My interest in my specific area is what has happened to the small farmers, the 200 acre small farmer?

Is he better off as a result of the PIK program or worse off? Those would be some of the things I think we really need to concentrate on what is happening to the small farmer. Is he still around because of PIK or not?

Mr. **Crowley**. We will try to address that in some other reviews.

Mr. **Flippo**. I appreciate that.

Mr. **Crowley**. We have something like seven individual jobs ongoing on PIK right now at the specific request of individuals, of chairmen mostly. We do hope to pull the whole thing together and have a comprehensive report available for you next year that will discuss those kinds of issues.

Mr. **Flippo**. I appreciate the gentleman's response, and I appreciate the chairman.

Chairman **Stark**. Mr. Duncan.

Mr. **Duncan**. I have one question.

Chairman **Stark**. Please.

Mr. **Duncan**. At the time the PIK program was announced what was the projection of the number of acres that would be taken out of production?

Mr. **Crowley**. It was about 23 million.

Mr. **Duncan**. Based on your survey what are the actual numbers of acres taken out of production under the PIK program?

Mr. **Crowley**. Just for PIK it was 48 million.

Mr. **Duncan**. 48 million?

Mr. CROWLEY. To participate in PIK those individuals had to also take out additional acreage to meet the voluntary set-aside a paid diversion. That is 21 million acres.

Mr. DUNCAN. Have you been able to determine the effect PIK has had on reducing commodity supplies and stabilizing farm prices?

Mr. CROWLEY. No, sir. We have not.

Mr. DUNCAN. Why not?

Mr. CROWLEY. We were asked to look at the cost of PIK, and we were asked to find the largest payments. Whether the savings were——

Mr. DUNCAN. You have gone a little further than estimating the cost. You have expressed some of your opinions in other matters, and I was just wondering why you did not do that.

You have not hesitated to give your opinion about other matters. I was just wondering why you have not been able to do that.

Chairman STARK. Do you have a personal opinion, Mr. Crowley?

Mr. CROWLEY. Could you rephrase the question, sir?

Mr. DUNCAN. My question was could you determine what effect PIK has had on reducing commodity supplies and stabilizing farm prices, and you said no and I asked why.

Mr. CROWLEY. The main reason is PIK is not really done yet. We thought we might try to address it in our ongoing reviews.

Mr. DUNCAN. Do you think these hearings are premature then?

Mr. CROWLEY. Not for the information that we were asked to provide.

Mr. DUNCAN. I just asked you for information which you do not have.

Thank you.

Chairman STARK. Mr. Dorgan.

Mr. DORGAN. Thank you, Mr. Chairman.

I am interested in knowing whether the Department of Agriculture has analyzed what would have happened if the $10 billion to $11 billion used for the PIK program had instead been used to purchase commodities on the market place, what would that have done for commodity prices?

Mr. CROWLEY. You might want to ask the Department some of those questions.

Mr. DORGAN. I will.

The question Mr. Flippo asked I think I can answer. His question was were PIK payments ever accorded to farmers, large farmers, in a magnitude larger than their proportional production. The answer is no.

PIK payments I think went proportionately to those who produced a certain percentage of the commodities. I think that is the answer to Mr. Flippo's question, but I still have a problem with that.

I think the suggestion is that that is in some way fair. Clearly it is not fair to take taxpayers' money and produce a $2.7 million payment to try to chase this goal of supply management.

I think there are better ways of doing it. I think Mr. Flippo's question needs to be answered. The answer is no one received commodities from the PIK program out of proportion to their relative proportion of production.

The statistics on farm programs included in the structures study, which has had far too little distribution, show that something over 50 percent of all of the benefits of the farm programs that are developed by the government go to around 10 percent of the producers. In other words, a relatively small percentage of the producers receive a significant portion of all of the benefits of all of the farm programs.

Is there anything you know of that would demonstrate that that has changed with PIK? Is it greater or lesser with PIK, or is it about the same?

Mr. CROWLEY. It is difficult to say that. We do not have an overall handle on who got all the PIK payments and the Department will not have it until around February of 1984. We have not updated our farm structure report you referred to, and I really cannot comment on it.

Mr. DORGAN. Do you know what the price of what is this week?

Mr. CROWLEY. $3.40 or $3.50.

Mr. DORGAN. Does anyone from the Department know?

Mr. AHALT. The average price is about $3.60 a bushel at the farm.

Mr. DORGAN. What was the price of wheat when we began the PIK program? Do you recall?

Mr. AHALT. Substantially it was——

Mr. DORGAN. $3.30, $3.40?

Mr. AHALT. It was below that.

Mr. DORGAN. The reason I asked the question is that is the line of questioning followed before. Has there been a direct relationship between PIK and the price of grain in the market?

I think everyone understands the reason this program was pursued was to try to control supply in the hope that the relationship between supply and demand would then produce a better price picture for farmers, which in the long term would come around and cause a lessening of the demand for taxpayer money in the form of target prices and other outflows of cash in the farm program.

I think I agree with your expression that it is really too early to tell what the long-term effect of PIK is, particularly with respect to corn. There was a drought that interceded and there certainly is no way of determining what effect that had.

Mr. FULTZ. I would add that the production figures from most of the commodities are not yet known to the Department. There is no way we could determine the true effect.

That is a major issue we will be addressing in future reviews and we plan to report to Congress in the summer of 1984.

Mr. DORGAN. The difficulty is this: The chairman talked about the surprise in this program and in the reports and so on. The fact is the House passed a bill that accommodated the Department, the U.S. Department of Agriculture. In fact it was brought to the floor I think by unanimous consent.

No one stood up and said I object to considering this. In fact, it passed by an overwhelming margin in the House to do a number of things to give the Department of Agriculture administrative authority to pursue PIK.

However, I do not think anyone in the House, and I do not think anyone even from the Farm Belt, understood the dimensions of the results of PIK. It is an embarrassment. One of the costs of PIK will be the cost that this kind of information portrays for those of us who try to push good farm programs in the House of Representatives.

I have already had someone from a city district come up to me on the floor after a piece appeared in the New York Times or Washington Post a month ago on this sort of thing and said, "You know, I come from an intercity district. I voted for farm programs because we have had this understanding. I will help you and so on and so forth."

But he said, "I will not vote for this sort of thing. You will not get my farm vote any more." That is a part of the cost of this program. The PIK proram produces and it is chasing the tail of supply management once again.

As long as you chase that tail you will always have this kind of problem. There are better ways to develop farm programs to help those who truly need it.

That is the family farm producer. Those are the ones that we should be concerned about out there. The others are big enough and have a big enough economic base to sustain some of the ups and downs.

They can prosper on the up side and sustain themselves on the down side. I think that is how we should go about developing farm programs.

Thank you, Mr. Chairman.

Mr. DUNCAN. Mr. Chairman, would you indule me for just a moment?

Chairman STARK. I certainly will, Mr. Duncan, if Mr. Schulze does not mind.

Mr. SCHULZE. I have no questions.

Chairman STARK. Thank you, Mr. Schulze.

Mr. DUNCAN. Does your study indicate any ways the PIK program can be made more equitable?

[Pause.]

Mr. CROWLEY. What it really does is raise some concern about the $50,000 payment limitation. I think Mr. Dorgan hit the nail on the head before when he said that if we are going to have a supply control program you almost have to get the biggest producers into that program. The Department has said that the limitation is an obstacle to getting the biggest producers in.

Mr. DUNCAN. When the $50,000 was mentioned at hearings the objection was from the members of the farm States, the Farm Belt, that that was not adequate. This is not perhaps the proper time to come back and say we did not put it in, but it was mentioned during the hearings on PIK.

It certainly was objected to, not by me but by some colleagues from the farm belt. Your study certainly has highlighted the situation in a few States.

Are there any States you know of where the PIK program has benefited the smaller farmers?

Mr. FULTZ. I think, sir, those States would be the States that generally have the smaller farmers, the South Dakotas, the North Dakotas.

Mr. DUNCAN. North Dakota is one of the States where you have the most abuse or one of them.

Mr. FULTZ. That was for two farms, though.

Mr. FLIPPO. Would the gentleman from Tennessee yield?

Mr. DUNCAN. I will yield, sir.

Mr. FLIPPO. I would like to know whether the people in your survey, the 709 large farmers in your survey, did they receive more PIK payments per acre removed than any other, compared to the small farmer?

Mr. CROWLEY. Not per acre, no. The PIK payment will be based on their assigned yields which is an individual determination by the farms.

Mr. FLIPPO. I see.

Mr. DUNCAN. Have any of your studies been questioned by the Department of Agriculture?

Mr. CROWLEY. No, sir. We sent a copy of our statement to the Department of Agriculture earlier this week and asked them to provide comments on it to see if there were points of disagreement. The statement has been discussed with them. I do not believe——

Mr. DUNCAN. Your study, is it an ongoing, continuing one?

Mr. CROWLEY. We have seven individual congressional requests we are working on. We are also working on an overall report to pull the whole thing together. These are ongoing, yes, sir.

Mr. DUNCAN. We can expect that when? February 1984?

Mr. CROWLEY. I hope to have the overall report out by July. The individual reports will be coming out as they have been requested by the individual requestors.

Mr. DUNCAN. I know it is easy to pick out certain things that are inflammatory, but your study is going into the whole program and you will have a report in July?

Mr. CROWLEY. Yes, sir; yes.

Mr. DUNCAN. How long did you take on the present report?

Mr. CROWLEY. On this report?

Mr. DUNCAN. Yes, sir.

Mr. CROWLEY. The request was dated May 1983 so it has taken since then. At first we were going to testify early in September and we shot for that date.

Mr. DUNCAN. Thank you very much.

Chairman STARK. Thank you, Mr. Duncan.

I would like to direct a couple of questions if I could to Mr. Wray who is the General Counsel. You sent a letter or Mr. Peach sent a letter on November 1, 1983, to the Secretary of Agriculture, Mr. Block, and I think it is fair to summarize the letter and attendant memorandum, which I would ask unanimous consent to make a part of this record, as saying that in the opinion of the General Counsel the $50,000 limitation on payments should have applied to the PIK payments, and I refer to your memorandum which has question and that is question 2. Does the statutory $50,000 limitation on the total amount of payments a person may receive under programs for wheat, feed grains, upland cotton, and rice apply to payments of commodities by the CCC under the PIK program?

There is an answer and one of the greatest legal opinions I have ever read in my life. It is "Yes." I must say there are some 20 pages of supporting documents.

Could you summarize for the subcommittee, Mr. Wray, the opinion issued by your general counsel and the consequences of this opinion and what steps the GAO can take or anyone can take to prevent illegal overpayments which in your opinion I understand are illegal if they exceed $50,000 per person? Could you summarize that for the committee please?

Mr. Wray. Well, essentially the first question we addressed in the memorandum is: Does the Department have the authority to make payments-in-kind under its statutory authority to make land diversion "payment?" We accepted the Department of Agriculture's position, which we think is quite reasonable, that the term "payment" is not limited to cash payments and can include payments in commodities.

The statutory provision which contains the $50,000 limitation also uses the term "payments" and does apply to land diversion payments under the Agricultural Act. It does not define the term "payment," but it draws no distinction between cash and in-kind payments. Our fundamental conclusion is that if commodities may be used as payments basically for a PIK program under the Agricultural Act, they must also be subject to the limitation on payments since that limitation draws no distinction in terms of the form of the payment.

That is what it comes down to.

Chairman Stark. Has that legal opinion been challenged by anybody?

Mr. Wray. It is very recent as you know. We have sent it to the Department of Agriculture and we have yet to receive their response.

Chairman Stark. What could the GAO do? What would be the results if in fact—Is it correct to say if in fact your legal opinion were to stand the test of court review then people receiving payments over $50,000 would be receiving illegal payments not authorized by law? Is that correct?

Mr. Wray. Well, we do not believe that the commodity payments in excess of $50,000 are authorized. In terms of the consequences, as we mentioned in the opinion we have no authority to take exception to any such payments. In fact I am not sure we could do so even if CCC was not exempt from our normal authority because unlike the provisions here our normal statutory authorities relate to payments by accountable officers, disbursing officers, and do forth.

At this time I guess a number of things could happen. The most immediate is we are expecting some sort of response from the Agriculture Department on the merits of our opinion. It is conceivable they might agree with us or they might not.

They might consult with the Justice Department. There are a lot of possibilities. I am really not in a good position to speculate on what their response might be.

Chairman Stark. I will tell you I have talked to some lawyers and they think you are right if it makes you feel any better.

Mr. Wray. Well, it does. We have tried to look at it carefully. We understand the implications and we have tried to be as careful as we could.

Chairman STARK. Is your Department not the general counsel for the House of Representatives in a sense in making a determination to provide us with opinions as to whether something is legal or not?

Mr. WRAY. We certainly do do that. That is one of our functions. In fact, one of our specific requirements under law is to report to the Congress on payments by a government corporation that we view as unauthorized.

Chairman STARK. You would view anything in excess of $50,000 per person as unauthorized?

Mr. WRAY. Yes. That is our opinion.

Chairman STARK. Thank you very much.

Mr. DORGAN. I just want to clear up a point Mr. Duncan made about the $50,000 payment limitation. To my knowledge, no hearings were held on the $50,000 payment limitation, and, in fact, the question of leaving the $50,000 payment limitation was an action taken by the USDA without congressional approval because congressional approval was bottlenecked in the Senate.

The result of that bottleneck, and no bill being passed, was that the USDA took action on its own to do certain things to accomplish the administrative objectives of PIK. I just want to make that point clear.

Mr. DUNCAN. If the gentleman would yield.

Mr. DORGAN. I would be happy to yield.

Mr. DUNCAN. When we held hearings there was a great discussion about a limitation and that was what I intended to say. That is what I thought I said.

Chairman STARK. Yes.

Mr. DUNCAN. That it was discussed at that time, and everyone seemed to be opposed to it. But the question was raised at the time.

Mr. DORGAN. Mr. Duncan, I understand that. But I want to make the point I think you are talking about the hearing held in the Ways and Means Committee with respect to the question of what kind of tax flexibility would be accorded those who receive these certificates, and I understood you to talk about the $50,000 payment limitation earlier with respect to the limit on the amount of funds a farm could receive.

I just wanted to make the point that was not the subject of a hearing by this subcommittee nor to my knowledge of the Agriculture Committee even, and the accomplishment of that was the USDA administration decision. I just wanted to make that point because I think it is important.

Chairman STARK. I thank the gentleman for his observations.

I have a question of Mr. Janik. Is it not your understanding that much of the cotton and rice land in California is irrigated through subsidized water provided by the Bureau of Reclamation? The approximate size of over 800,000 acres in Fresno County alone are irrigated with this subsidized water.

Mr. JANIK. I am not sure of the figure, but there is a lot of irrigation.

Chairman STARK. I understand the total cost of the irrigation of the Central Valley project which is where much of this cotton came from is $5.7 billion. The projected cost and over $2.5 billion has been allocated to that to date.

Is that approximately——

Mr. **Janik**. I am not sure.

Chirman **Stark**. Do you have any knowledge?

Mr. **Fultz**. It sounds——

Chairman **Stark**. It sounds reasonable?

Mr. **Fultz**. Yes.

Chairman **Stark**. I guess what I want to get at is we are spending $2.5 billion to give the same corporate farmers I mentioned earlier water out of one taxpayer's pocket. Then we are dipping another taxpayer's pocket to give them millions of dollars not to plant cotton.

We just provided the free water to make the cotton grow more. Does that not seem counterproductive to you, Mr. Janik, I mean, just as a strategy.

Mr. **Janik**. In looking at it froom the overall Government standpoint I would say yes.

Chairman **Stark**. Thank you.

Are there any further questions? I want to thank the General Accounting Office and say to the members of the subcommittee that this was a response to the question of whether we would extend the tax postponement on these payments made by the subcommittee immediately after we enacted the legislation, and they have done a magnificent job.

Much of the staff spent many months in the field digging out this information which was not available through the Department of Agriculture, and I want to commend the GAO and thank them for their participation here today.

Mr. **Crowley**. Thank you very much, Mr. Chairman.

[The prepared statement and attachment follow:]

STATEMENT OF BRIAN P. CROWLEY, SENIOR ASSOCIATE DIRECTOR, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE

Mr. Chairman and members of the subcommittee, We are glad to be here today at your request to discuss a number of issues pertaining to the Department of Agriculture's 1983 Payment-In-Kind (PIK) program.

We have several reviews ongoing of various aspects of the Department's PIK program and will be reporting on their results over the next several months. We also plan to issue a report to the Congress in the summer of 1984 on the overall management and effectiveness of the 1983 PIK program. Our objective is to provide the Congress with a comprehensive assessment of the PIK program for its use in deliberating the 1985 farm bill. The issues we will be discussing today will be further developed as we continue our overall assessment of the PIK program.

The Department announced the 1983 PIK program in January 1983 in response to trends that had been evolving in the agricultural sector since 1980. These trends included record harvests and decreased domestic and foreign demand. This resulted in low commodity prices for producers, decreased farm incomes, and a large buildup of government-held (government and producer owned) grain and cotton stocks. These trends had required the Department to increase its farm program payments fourfold between 1980 and 1982. Potential payments for 1983 were estimated at 7 times those of 1980. Because of this situation, the Department had some difficult decisions to make regarding a 1983 farm program. The Department's response was the announcement of the 1983 PIK program on January 11, 1983. The program covers wheat, corn, grain sorghum, rice, and cotton.

After it became apparent that there would be a high level of PIK participation by producers, you asked us to estimate the cost to the Department of the 1983 PIK program, identify farms that would receive large PIK payments, and review the reasonableness of the Department's estimated budget savings attributable to the PIK program. Let me briefly highlight our findings and then discuss in some detail each of these areas.

SUMMARY OF GAO FINDINGS

On the basis of our review, we estimate that the 1983 PIK program will cost the Department between $10 billion and $11 billion. This estimate is based on the Department's August 29, 1983, commodity needs to meet PIK corn, grain sorghum, wheat, and rice obligations to producers and the Department's September 9, 1983, estimate to meet cotton obligations. Nearly all of these costs represent government assets given up to meet PIK payment obligations to producers and, for the most part, have not directly affected fiscal year 1983 budget outlays. We caution, however, that this is an estimate at one point in time using the best available data. Final cost data will not be available until after March 31, 1984. Our cost estimate includes only the government's PIK costs; it does not include costs to consumers and businesses.

In our survey of large PIK payments, we obtained information on 708 farms in 9 states. Our sample was judgmental in that we selected the states and counties having the largest participation in the PIK program and then identified the larger participating producers. We did this for each PIK commodity. On the average, each of the 708 farms in our survey will receive commodities valued at $175,000. Of these 708 farms, 35 will receive commodities valued at over $500,000 each, including 7 farms that will receive commodities valued at more than $2 million each. Also, of the 10 farms that were scheduled to receive the largest payments, 8 were California cotton producers. However, let me emphasize that the farms in our survey were not statistically sampled. Therefore, the results should not be interpreted as including all such large payments nor, on the other hand, should they be interpreted as being representative of all PIK payments.

The Department, in the President's mid-season budget update, estimated that the 1983 and 1984 PIK programs would result in a $14.9 billion savings in farm program outlays for the 4-year period ending in 1986. In view of the September 29, 1983, announcement, the Department's estimates will have to be revised. Regardless of the need for revisions, however, budget savings on farm programs for a 4-year program components generally change from year to year, but because of the uncertainties, such as future weather and economic conditions, surrounding the agricultural sector. We also have reservations about the reasonableness of the estimated savings because the PIK program and the non-PIK program that it was compacted with, for determining the savings, were not analyzed under the same set of assumptions. If the same set of assumptions had been used, the savings attributable to the PIK program would be less. However, as explained later, because of the uncertainty surrounding future farm program outlays, we cannot quantify the amount of budget savings from PIK.

BACKGROUND

The Department of Agriculture uses a number of farm programs to try to stabilize farm commodity prices and incomes. The three major programs have been the supply control, direct payment, and price-support programs, including commodities held in the reserve program.

The supply control programs are designed to reduce the amount of planted acres during a given crop year. Such programs permit the Department some control over production and commodity inventory levels from year to year. Under these programs, producers must take a certain percent of land out of production before becoming eligible for farm program benefits. These benefits may include direct cash payments and/or price-support loans. In addition, producers must enroll in the supply control programs before being eligible to participate in PIK.

Under the direct payment program, the Department supplements farm incomes by paying producers deficiency payments and diversion payments. Deficiency payments are cash payments made directly to producers to supplement the producers' income when a commodity's market price is lower than a set price, or a target price, established by law. Diversion payments are cash payments to producers, at a specified rate, for taking a certain percent of their cropland out of production.

Under the price-support program, the Department makes loans at established minimum prices, which are in essence floor prices, to producers who agree to store reserve commodities, thereby keeping them off the market during periods of excess supply to help keep prices from falling. The producer can either pay back the loan or forfeit the commodity to the government when the loan comes due. If forfeited, the government takes possession of the commodity and it becomes part of the inventory of the Department's Commodity Credit Corporation (CCC).

The Department's decision to implement a PIK program was partially a result of the farm programs' not meeting their objectives of stabilizing farm commodity prices and farm incomes during the past few years. This occurred because of record harvests in the United States, decreased demand both in the United States and abroad, and increased foreign production.

In 1981, U.S. farmers produced record levels of wheat and corn and near record levels of cotton. However, both domestic and foreign demand for these and other U.S. commodities weakened throughout the marketing year. This resulted in growing U.S. stock levels. In an effort to reduce supplies, the Department implemented acreage reduction programs for wheat, corn, grain sorghum rice, and cotton in 1982. Despite this effort to reduce the acres planted, U.S. producers increased their per acre yields and harvested even larger crops of wheat and corn in 1982. The record production plus the 1981 carryover in stocks dramatically increased stock levels for nearly all major commodities. By the end of the 1982 crop year, ending rice stocks had quadrupled their level of 2 years earlier; grain sorghum, corn, and cotton stocks had tripled; and wheat stocks had increased about 60 percent. The combination of increased stocks and low commodity prices resulted in a dramatic increase in federal outlays for farm programs because they (1) required higher deficiency payments and (2) provided the producers a greater incentive to put their commodities under loan. In fiscal year 1980, federal outlavs for farm programs were $2.7 billion; however, in fiscal year 1982 these outlays jumped to $11.6 billion, over a fourfold increase.

The initial 1983 acreage reduction and paid land diversion programs, which the Congress mandated in the Omnibus Budget Reconciliation Act of 1982, were aimed at taking more land out of production than in 1982. However, it became evident soon after these programs were announced that the adverse agricultural trends since 1980 would continue and federal outlays for farm programs would continue to soar. The Department estimated that fiscal year 1983 federal outlays would increase to $18.9 billion, a $7.3 billion increase over fiscal year 1982 and a sevenfold increase since 1980.

PIK program

The 1983 PIK program was a supplemental program to the acreage reduction and paid land diversion programs for wheat, corn, grain sorghum, rice, and cotton. To be eligible to participate in PIK, producers had to enroll in these earlier announced programs.

Under PIK, producers who agreed to take an additional 10 to 30 percent of their acreage, or in some cases, their entire acreage, out of production were to receive a certain percent of the commodity they otherwise would have planted and harvested. The program's overall objectives are to (1) reduce production of these commodities, (2) reduce surplus commodity stocks, (3) increase commodity prices, which will eventually increase producers' income, and (4) avoid increased budget outlays that would otherwise be necessary under existing farm programs. It is too early to judge whether all of these objectives have been met. These issues will be addressed in our other ongoing and future reviews of the PIK program.

As a result of the various aspects of the 1983 farm program, producers took out of production about 80 million of the approximately 212 million acres that were expected to be planted in wheat, corn, grain sorghum, rice, and cotton. Of the 80 million acres, about 11 million acres were taken out on farms that did not participate in PIK but did participate in the earlier announced acreage reduction and paid land diversion programs. Of the other 69 million acres, about 48 million acres represent PIK acres and the remaining 21 million acres represent acres taken out of production by PIK participants under the acreage reduction and paid land diversion programs.

To meet its PIK obligations to producers, the Department initially planned to make PIK payments in two ways. If a participating producer had one or more outstanding loans with CCC, then the Department would forgive part or all of the producer's loan or loans (principal and interest) and the producer would retain the commodity used as loan collateral as the PIK payment. A producer who did not have an outstanding loan would receive an entitlement letter to receive CCC stocks as payment.

Because of the large participation in PIK, the Department did not have sufficient CCC stocks of wheat, corn, grain sorghum, and cotton available to pay producers who did not have outstanding loans. As a result, the Department had to purchase additional quantities of these commodities. As provided for in the PIK regulations, it purchased these additional quantities at a premium through a competitive bid process from producers who had commodities under CCC loan that were not being used for PIK payments. For example, a producer with 50,000 bushels of corn still under loan would transfer ownership of 40,000 bushels to the Department and the Department would forgive the producer's loan of 50,000 bushels. The producer would retain 10,000 bushels which would represent the premium the Department paid for purchasing the producer's commodity.

Even after purchasing these commodities, the Department did not have sufficient stocks of wheat and cotton to meet all its PIK obligations. However, the Department had established procedures, labeled "harvest for PIK" to meet its wheat and cotton PIK obligations to make up for these shortages. Under these procedures, the Department required PIK producers of wheat and cotton, who were to receive their PIK payments from CCC inventory and who had not enrolled their entire wheat and cotton acreage in PIK, to obtain CCC loans for their 1983 crops. The wheat or cotton under loans was to be assigned to the Department as collateral with the producers receiving the loan proceeds. The Department would then forgive the loans and return the wheat or cotton to the producers as their PIK payments.

COST OF PIK

On the basis of the Department's estimated PIK needs for corn, grain sorghum, wheat, and rice as of August 29, 1983, and cotton as of September 9, 1983, we calculate that the 1983 PIK program will cost the Department between $10 billion and $11 billion. Nearly all of these costs represent government assets given up to meet PIK payment obligations to producers and, for the most part, have not directly affected fiscal year 1983 budget outlays. The assets given up include, for example, commodities under government loans and government-owned commodities. However, it should be noted that these assets will be written off by CCC and included in net realized losses to CCC. As such, CCC may eventually have to be reimbursed for these loans through budget outlays in future fiscal years. A cost range is presented because three elements used in determining PIK costs—storage costs, diversion payments, and potential interest forgiven—can vary; consequently, a single value cannot be assigned to these elements. The following table shows the cost elements used in making our estimate and the estimated minimum and maximum costs associated with each element.

[In billions of dollars]

	Minimum cost	Maximum cost
Cost element:		
Cost of commodities [1]	9.363	9.363
Storage costs	.104	.390
Diversion payments	.336	.371
Distribution of commodities	.167	.167
Potential interest forgiven	0	.826
Other	.055	.055
Estimated cost for 1983 PIK program	10.025	11.172

[1] The cost of commodities is based on the Department's Aug. 29, 1983, estimate of PIK obligations for wheat, corn, grain sorghum, and rice and Sept. 9, 1983, estimate for cotton. PIK estimates have fluctuated considerably and most likely will continue to do so. As a result, the cost associated with PIK obligations will vary until final PIK obligation data is available.

Before discussing the costs of each of these elements in some detail, let me emphasize that there most likely will be future budget savings as a result of PIK. The Department, in July 1983, estimated that as a result of a 2-year PIK program in 1983 and 1984, it would save about $14.9 billion in farm budget outlays through 1986. We will address the Department's savings estimate in a few moments.

Cost of PIK commodities

As of August 29, 1983 (September 9 in the case of cotton), the Department estimated its obligations to producers at 1.744 billion bushels of corn, 177.4 million bushels of grain sorghum, 548.7 million bushels of wheat, 4 billion pounds of rice, and 4 million bales of cotton. I would like to point out that the Department's estimates of PIK needs have fluctuated considerable and most likely will continue to do so as program reports on needs are updated. In addition, depending on the commodity, geographic location, and when the producers elect to take possession of their PIK commodities, actual payment to producers, which began on June 1, 1983, can take place any time up through March 31, 1984. As a result, actual commodity costs associated with PIK probably will not be known until at least April 1984.

Our commodity cost estimates are based on CCC's estimated quantities to meet the PIK obligations. The estimates are also based on the sources the Department expected to use to fulfill its PIK obligations. These sources, as I mentioned earlier, include (1) loan forfeitures for producers who had outstanding loans, (2) loan forefeitures for purchasing additional commodities from producers, (3) CCC inventory, and (4) in the case of wheat and cotton, requiring some producers to take out 1983 loans on their crops and using those crops as the PIK payments. We valued the commodities at CCC's cost, which varies depending on the source of the commodities. An alternative method of valuing the PIK commodities is at current market values. However, it is difficult to determine market values because many producers have not yet taken possession of their PIK commodities and market values vary by geographical areas. Our methodology, a detailed breakdown of our estimated cost of the PIK commodities, and our reasons for not using market values are discussed in appendix I.

Storage costs

Under the PIK program, the Department will pay all producers for up to 5 months storage after their PIK commodities become available. Also, the Department will pay an additional 7-months storage compensation to producers who have commodities that are stored on the farm in a special type of loan account called a farmer-owned reserve and are to be used to meet PIK obligations. These reserve loans are designed to keep the commodities in storage for an extended period of time. The Department is paying this additional 7-month storage compensation because of the cost these producers incurred for constructing on-farm storage facilities for commodities placed in the reserve. The 7-month storage cost will be paid regardless of when the producers dispose of their PIK commodities. Together, the up to 5-month and the 7-month storage payments will result in a PIK cost ranging from about $104 million to $390 million.

The lower amount—$104 million—is the additional 7-month storage compensation to be paid to producers who have reserve loan commodities stored on their farms. This amount will be paid by the Department regardless of how long the PIK crops are actually stored on the farm. The cost for the up to 5-month storage depends on the time at which producers will take delivery of their PIK commodities. If all producers take possession immediately after they are entitled to the commodities, no 5-month storage costs would be incurred. However, if all producers wait the entire 5-month period, then storage costs will be $286 million. In the latter case, this would increase to total storage costs under PIK to about $390 million.

More detailed cost information and the methodology we used in calculating increased storage costs is in appendix II.

Diversion payments

As stated earlier, to be eligible to participate in the PIK program, producers were required to enroll in the paid land diversion program. Under this program, producers receive direct payments, at a specified rate, for taking a certain percent of their cropland out of production. These payments are called diversion payments. Because more producers participated in the PIK program than in the originally announced 1983 farm program, more producers will receive diversion payments.

In determining the increase in diversion payments as a result of PIK, we relied heavily on the Department's commondity analysts' estimates of what the farm enrollment and paid land diversion acres would have been under the originally announced program and compared their estimate with the program enrollment in PIK.

We estimated a range of $336 million to $371 million for the increase in diversion payments because the cotton program offers a voluntary paid land diversion option while the other commodity programs do not give producers an option. Consequently, because we could not precisely estimate the increased cotton diversion payments attributable to PIK, we used a range. The estimated $336 million increase in diversion payments is based on no participation in the voluntary cotton diversion program and the estimated $371 million is based on the maximum allowed. Appendix III contains more details on the methodology we used and the estimated increased costs for diversion payments.

In all likelihood, there will be no additional costs for deficiency payments as a result of PIK. In fact, the Department may realize savings. Deficiency payments are direct payments to farm program participants to supplement the participants' income when a commodity's market price is lower than a set price, or a target price, established by law. Possible deficiency payments and what impact the PIK program has had on deficiency payments are difficult to assess. Because commodity prices are much higher today than they were when the Department announced the initial 1983 farm program, the Department most likely will pay less in deficiency payments than it originally expected. However, it is difficult to assess what impact the PIK program has had on increasing commodity prices because abnormal weather conditions have also affected the prices of cotton, corn, and grain sorghum. In addition, deficiency payment rates are based on a 5-month average market price and for most commodities this 5-month period has not yet ended.

We will discuss the Department's estimate of potential budget savings as a result of PIK, including deficiency payments, later.

Distribution of PIK commodities

The Department is obligated to provide PIK commodities as near as possible to a warehouse designated by each producer; however, government-owned stocks needed to meet PIK obligations to the producers are often not located where they are needed. Instead of transporting PIK commodities to the locations needed, the Department chose whenever possible to exchange its commodities for commodities owned by dealers in the needed locations. This generally resulted in the Department paying a premium.

We estimate, based on Department records as of September 30, 1983, that a premium of $167 million was paid to dealers to execute exchanges on wheat, corn, and grain sorghum. The premium value is based on Department records which show that it paid an additional 5.3 million bushels of wheat, 47.6 million bushels of corn, and 2.9 million bushels of grain sorghum to dealers to execute the exchanges. We identified only one actual shipment of grain that was made to meet PIK requirements. In this case, about 307,000 bushels of corn were shipped from Missouri to Texas at a cost of about $245,000.

Interest costs

We estimate that forgiving loans under PIK program may cost the Department up to $826 million in potential interest payments from producers. By forgiving loans to meet some of its PIK obligations, the Department forgoes any opportunity to recapture the interest owed by producers on these loans.

The actual interest lost would depend on how many producers would have repaid their loans. A producer's decision to repay the loan would depend on the market price of the particular commodity under loan. When commodity prices are high, producers would most likely repay their loans, including interest; take possession of their commodities; and then sell their commodities in the market. When commodity prices are low, producers tend to forfeit their loan collateral (let the Department take possession of their commodities) rather than pay off the loans. When the collateral is forfeited, both the loan principal and the accumulated interest are written off. Thus, interest due the Department is not received from producers on these forfeited loans. As a result, if producers would not have repaid the loans forgiven because of PIK, then no forgiven interest would have occurred. However, if these loans would have eventually been repaid, then the Department will lose the potential interest which could be as high as $826 million.

Since cotton, corn, and grain sorghum prices are currently high because of the drought in the South and Midwest, these loans may have been repaid and forgiving these loans would result in an additional PIK cost to the Department. More details on the methodology used and the calculations on the potential interest forgiven are in appendix IV.

In commenting on a draft of this statement, Department officials told us there would be savings of $1.5 billion in interest expenditures as a result of PIK. However, this savings was not addressed in the President's mid-session budget estimate. Since this savings was just recently brought to our attention, we have not had the opportunity to review its accuracy and reliability.

Other costs

Our estimate of $55 million for other PIK costs includes $44 million for transferring, into warehouses, farm-stored commodities that the Department purchased under its PIK acquisition program and $11 million for miscellaneous costs to administer the PIK program. Other miscellaneous costs, such as weighing and inspection fees for rice in inventory, will be incurred but are not known at this time.

LARGE PIK PAYMENTS

To respond to your request on large PIK payments, it was necessary for us to survey selected counties because information on individual PIK payments is not expected to be available on a nationwide basis until February 1984. The counties and farms we surveyed were judgmentally, rather than statistically, selected as follows.

Because our objective was to identify large PIK payments, we identified states having the largest total quantities of PIK entitlements for each commodity. We then selected in rank order two states each for rice and cotton, four states for wheat, and five states for corn and grain sorghum. These included a total of nine states because some had the largest entitlements for more than one commodity.

We further selected counties in these states that had either special PIK participants, those whose deficiency and diversion payments would, except for the $50,000 payment limitation, be expected to exceed this limit that was set by law and which tend to be the largest producers, or large farms that put their entire base acres under PIK. After selecting the counties, which numbered 170, including some that had large producers of more than one commodity, we asked the Agricultural Stabilization and Conservation Service's office in each county to provide us information on up to the three largest PIK payments, by crop, in its county. This resulted in collecting information on 708 farms. The dollar value of the PIK entitlements is based on our calculations of the estimated costs of the PIK commodities, which are shown in appendix I to this statement. More detailed information on our survey procedures on large PIK payments is in appendix V.

Our survey results should not be interpreted as including all such large payments nor, on the other hand, should they be interpreted as being representative of all PIK payments.

Survey results

Each of the 708 farms surveyed will receive commodities valued at an average of $175,000; 35 will each receive commodities valued at over $500,000. Of these 35, 7 will each receive commodities valued at more than $2 million. Six of these seven are California cotton farms and one is a California rice farm.

Of the farms in our survey, those receiving the largest PIK payments are cotton farms in California. These are followed by California rice farms and midwestern corn farms. Texas cotton, Arkansas rice, and wheat and grain sorghum farms will receive PIK commodities valued at lesser amounts.

We obtained PIK payment information for 21 of the approximately 4,000 California cotton farms enrolled in PIK. Twelve of these 21 farms will each receive cotton valued at over $1 million, and all 21 farms will receive cotton valued at a total of about $27 million. The 21 California cotton farms represent about one-half of 1 percent of the total California cotton farms enrolled in PIK, yet they will receive almost 13 percent of the PIK cotton payments due California cotton farmers. In Texas, where large payments were not as prevalent, the 148 cotton farms in our survey, which represented three-tenths of 1 percent of the total Texas cotton farms, will receive almost 6 percent of that state's cotton payments.

Rice payments in California are somwhat similar to cotton payments in California. The 26 California rice farms on which we obtained information will each receive rice valued at an average of $471,000, with four farms receiving payments exceeding $1 million each. The 26 farms, which represent about 1.6 percent of the total California rice farms enrolled in PIK, will receive almost 17 percent of California's rice PIK payments.

At your request, Mr. Chairman, we also identified from the 708 farms in our survey the three largest PIK payments for each of the five PIK crops, including the payments the producers will receive for other PIK crops on their farms or for other farms enrolled in PIK. Of these 15 producers, 13 had other PIK crops on their farms and/or other farms enrolled in PIK which will increase their PIK payments. For example, the largest payment we indentified will go to a corporation operating a California cotton farm. The corporation will receive nearly 14,000 bales of cotton costing about $3.6 million. The corporation will also receive about 29,000 bushels of wheat costing $115,000, increasing the total PIK payment to about $3.7 million.

In another case, a corporation operating a Nebraska farm will receive 701,200 bushels of corn valued at about $2 million. The corporation also operates three other farms enrolled in PIK that are located in Texas and Arkansas, and it will receive nearly 234,600 bushels of wheat and 193,600 bushels of corn for these farms. The additional corn and wheat will cost about $1.5 million and increase the total PIK payment to about $3.5 million. More detailed information on the PIK costs associated with these 15 producers is shown in the second table in appendix V.

REASONABLENESS OF BUDGET SAVINGS ATTRIBUTABLE TO PIK

As mentioned earlier, Mr. Chairman, budgetary savings most likely will occur as a result of PIK. In the President's mid-session budget update of July 15, 1983, the Department states that the 2-year PIK program will result in about a $14.9 billion savings from fiscal year 1983 through fiscal year 1986. The Department's estimate is based on a comparison of estimated program outlays through fiscal year 1986 a result of a 2-year PIK program and the originally announced 1983 farm program which did not include PIK. It should be pointed out that since July, the Department has revised its 1984 PIK program plans. The July budget estimate was based on a 1984 PIK program for wheat, corn, grain sorghum, rice, and cotton. On August 9, 1983, the Department announced a 1984 PIK program for wheat; however, on September 29, 1983, it announced that there would be no 1984 PIK program for corn and grain sorghum because the 1983 drought made it unnecessary. On October 28, 1983, the Department announced there would be no 1984 PIK program for cotton. The Department has yet to announce its 1984 plans for rice and cotton. As a result of the revisions already made to the 1984 PIK program, the budget estimates and potential savings made in July will need to be revised.

Concerning the July budget estimate, most of the savings were attributed to decreased outlays for storage, diversion, and deficiency payments as a result of the PIK program. A breakdown of the Department's estimated budget savings is as follows:

$3 billion of the estimated savings represents lower producer storage payments. The $3 billion figure is based on the assumptions that (1) because the PIK program provides a greater incentive for producers not to plant in 1983 and 1984, less commodities will be grown and (2) commodity prices will be high enough so that producers will have no incentive to take out loans on the commodities they do grow. As a result of less commodities being placed under goverment loan, the Department will incur less storage payments.

$3.4 billion represents lower diversion payments. The Department believes that a 1984 PIK program and acreage reduction programs in 1984 and 1985 will keep commodity stocks at desired levels and, therefore, eliminate the need for paid land diversion programs in 1984, 1985, and 1986.

$7.1 billion represents a reduction in deficiency payments. In estimating this saving, the Department assumed that the Congress would repeal the annual increases in target prices called for in the 1981 farm act and would legislate a freeze on target prices through 1986 at the 1983 price levels. The Department also assumed that the loan rates, which it sets, would be frozen at or below the 1983 levels and that commodity prices would generally exceed the loan rates. The Department believed that with lower target prices and commodity prices higher than loan rates, the deficiency payment rate, which is generally based on the difference between the two prices, would be reduced and the corresponding projected deficiency payments would be substantially lower. The Department also assumed that less acres would be planted in 1983 and 1984 because of the PIK program; thus, less acres would be subject to deficiency payments and this would further reduce the amount of future deficiency payments.

The other $1.4 billion in estimated savings represents a reduction in net lending on loans and less costs for handling and transportation of commodities.

Budget estimates on farm program costs are very difficult to project because of the uncertainties surrounding the agricultural sector of the economy. These uncertainties involve (1) weather conditions, which have an enormous impact on crop production (the latest evidence of which is the drought this year in the Midwest which resulted in the Department's revising its 1984 PIK program plans), (2) domestic and foreign demand for our agricultural commodities, (3) foreign production of commodities, (4) the strength or weakness of the dollar, and (5) legislative and administrative changes affecting farm programs.

Of the areas covered in the Department's estimates, storage, net lending, and the handling and transportation of commodities appear to offer the potential for savings. However, we have concerns about the Department's assumptions on diversion and deficiency payments. On diversion payments, the Department assumed that with PIK, a paid diversion program would not be needed in 1984, 1985, and 1986 and that the Congress would not legislate a paid land diversion program. However, increased commodity prices brought on by a combination of PIK and the drought could provide producers with the incentive to increase plantings in crop year 1984 and beyond which could result in large harvests in future years. Under this scenario, if a paid land diversion program is needed, or is legislated, the savings for diversion as a result of the PIK program may be negated.

Our concerns with the projected deficiency payment savings stem from the fact that the two programs the Department compared, the PIK program and the originally announced land diversion program, were not analyzed on the same basis. As stated earlier, deficiency payments are cash payments made to producers to supplement the producers' income when a commodity's market price is lower than a set price, or target price, established by law. If target prices are reduced and loan rates remain the same, deficiency payments will be lower.

In analyzing the PIK option, the Department assumed that loan rates for 1984 through 1986 would be about the same as those for 1983 and that the Congress would comply with its request to repeal the higher target prices currently scheduled to go into effect through 1985 and freeze these target prices at the lower 1983 levels. This would result in lower deficiency payments. In analyzing the non-PIK option, the Department assumed that loan rates for 1983 through 1986 would be similar to those it assumed under the PIK option but that the higher target prices established by law would stay in effect. This would result in higher deficiency payments. If the higher prices currently in effect were used under the PIK option analysis, deficiency payments under the PIK option would most likely be higher, thus decreasing the savings attributable to the PIK option. In fact, Department officials who commented on a draft of this testimony said that $4.0 billion of the $7.1 billion deficiency savings is not a result of PIK but a result of anticipated frozen target prices.

As I indicated at the outset of my statement, Mr. Chairman, we will be continuing our analysis of the PIK program, building on the information we have developed to date.

That concludes my statement. We will be glad to respond to any questions.

APPENDIX I.—METHODOLOGY USED TO CALCULATE THE ESTIMATED COST OF PIK COMMODITIES

Our estimate of the cost of PIK commodities is based on the Department's estimate of quantities needed to satisfy PIK obligations to farmers. We priced these quantities at CCC's cost, which varies depending on the source used to fulfill the obligation; that is, whether the commodities come from outstanding loans, CCC inventory, purchases of additional commodities from producers with outstanding loans, or "harvest for PIK."

The quantities needed for PIK are based on the Department's report of total quantities needed as of August 29, 1983 (September 9, 1983, for cotton) plus the Department's estimated quantities needed to account for any differences between the quality of commodities given to producers and the quality required by the program. For example, producers entitled to No. 2 yellow corn will in some cases be given No. 3 or No. 4 corn by CCC. In these cases, CCC has to make up for the quality difference by giving the producers additional quantities of corn.

The sources of the commodities used to pay PIK obligations will vary. The first source for each crop is the producer's own commodity that has been pledged as collateral for a CCC loan. In these cases, the Department would forgive part or all of the loan (principal and interest) and the producer would retain the commodity as payment for PIK. If the PIK participant has no loan, then the commodity must come from CCC's inventory stocks which it has acquired either through normal loan forfeitures or through purchases from producers who had commodities under loan that were not needed for their PIK entitlements. If the loans and CCC's inventory stocks are not sufficient to pay all PIK requirements, as is the case for wheat and cotton, selected producers are required to take out CCC loans on their 1983 crop and then, through immediate forfeiture of the loan collateral, use that crop as their PIK payment. This is labeled as the "harvest for PIK" program.

We determined the dollar value to be placed on the quantities needed for PIK for each source to be used for payment. For loans forgiven to meet PIK obligations, we first determined (1) all outstanding loans in effect as of April 30, 1983, that could possibly have been used for PIK and (2) the weighted average unit price for each commodity for these outstanding loans. We then determined the quantities of commodities under loans to be forgiven as a result of PIK and valued each of these commodities based on the same weighted average unit price determined for all outstanding loans on that commodity. We used these prices based on our assumption that the mix of loans forgiven for PIK would be the same as the mix of all loans as of April 30, 1983. It was necessary to make this assumption because the actual mix of loans to be forgiven was (and is) not known. We chose the April 30, 1983, date because April was the last month prior to any unusual impact on loans from PIK activity, such as loan acquisitions, which is discussed below.

For commodities that CCC had purchased, we determined the weighted average unit price for each commodity using the same method discussed above. We then added the additional cost, or premium, the Department paid to producers when it acquired these commodities. Although the crop years of the commodities purchased under the acquisition program are known, we used the same weighted average unit prices we used on the forgiven loans because some of the acquisition program commodities, specifically wheat and grain sorghum, will be used for other than PIK purposes. Although the amount of commodities to be used for other purposes can be determined, their identity, by crop year, can not.

We value PIK payments from CCC's inventory at the April 30, 1983, average unit cost to CCC, as computed by the Department, for commodities in CCC's inventory. We valued the 1983 wheat and cotton "harvest for PIK" loans at the 1983 weighted national average loan rate.

An alternative method of valuing the PIK commodities is at current market values. Although current market values may reflect actual commodity values to producers, it is difficult to determine these values because first many producers have not yet taken possession of their PIK commodities and secondly market values vary in different geographical areas. The methodology we used to determine the value of the PIK commodities is based on what the commodities cost the Department and is more representative of the cost to the federal government in making PIK commodity payments to producers.

Our estimated cost is not the final cost that will be incurred to meet PIK obligations. It is merely an estimated cost to the government of the commodities at one point in time. The Department's estimates of needs have fluctuated considerably from time to time and will most likely continue to change as program information is updated. For each 1 million bushel change in corn, sorghum, and wheat, we estimate the cost will vary by about $2.8, $2.9, and $3.9 million, respectively. For each 1 million pound change in rice, the cost will vary by about $80,000; and for each 1,000 bale change in cotton, the estimated cost will vary by about $264,000. Fluctuations in the Department's estimates of requirements for PIK are as follows:

FLUCTUATIONS IN USDA'S ESTIMATED PIK NEEDS

[Amounts in thousands]

	Bushels—			Rice (pounds)	Cotton (bales)
	Corn	Sorghum	Wheat		
Estimated needs, May 25, 1983	1,799,260	227,232	550,977	4,029,059	4,110
Changes in needs:					
May 25 to July 13, 1983	+10,037	−26,906	+5,126	+66,381	−25
July 13 to Aug. 8, 1983	−55,658	−11,847	−20,708	−133,572	−27
Aug. 8 to Aug. 29, 1983	−9,499	−11,067	+8,288	+38,511	
Aug. 29 to Sept. 9, 1983	+112,813	−418	+2,541	+110,530	−46
Estimated needs, Sept. 9, 1983	[1]1,856,952	176,994	[1]546,225	4,110,909	4,012

[1] Does not add due to rounding.

As the table shows, some significant increases and decreases have occurred. For example, the requirement for corn increased nearly 113 million bushels between August 29 and September 9, 1983. Unless there is a subsequent decrease, this increase alone will add about $321 million to the cost of PIK commodities.

The following table presents our estimates of the cost of the commodites that will be used as PIK payments, based on the Department's estimate of PIK requirements as of August 29, 1983 (September 9, 1983, for cotton).

ESTIMATE OF THE PIK COST OF COMMODITIES

	Quantity	Rate	Cost
Corn (bushels):			
Quantity needed as of Aug. 29, 1983	1,744,139,524		
Plus: Quality adjustment needs	91,000,000		
Total needed	1,835,139,524		
Provided from:			
Producer loans	815,007,081	$2.69441	$2,195,963,229
Loan purchases	760,076,566	2.69441	2,047,957,900
Added cost of loan purchases (133,563,650 bu times $2.69441)			359,875,234
CCC inventory [1]	260,055,877	2.36296	614,501,635
Total	1,835,139,524		5,218,297,998

ESTIMATE OF THE PIK COST OF COMMODITIES—Continued

	Quantity	Rate	Cost
Sorghum (bushels):			
Quanity needed as of Aug. 29, 1983	177,411,825		
Plus: Quality adjustment needs	16,000,000		
Total needed	[illegible]93,411,825		
Provided from:			
Producer loans	82,263,613	2.69153	221,414,982
Loan purchases [2]	111,148,212	2.69153	299,158,747
Added cost of loan purchases (17,728,140 bu times $2.69153)			47,715, 821
Total	193,411,825		568,289,550
Wheat (bushels):			
Quantity needed as of Aug. 29, 1983	543,683,769		
Plus: Quality adjustment needs	5,000,000		
Total needed	548,683,769		
Provided from:			
Producer loans	207,482,922	3.69474	766,595,451
Loan purchases [2]	188,229,352	3.69474	695,458,516
Added cost of loan purchases (33,203,658 bu times $3.69474)			122,678,883
Harvest for PIK 1983 loans	152,971,495	3.65	558,345,957
Total	548,683,769		[illegible]078,807
Rice (pounds):			
Quantity needed as of Aug. 29, 1983	[illegible]8,582		
Plus: Quality adjustment needs	230,100,000		
Total needed	4,230,478,582		
Provided from:			
Producer loans	2,067,452,384	.08174	168,993,558
CCC inventory [1]	2,163,026,198	.07862	170,057,120
Total	4,230,478,582		339,050,678
Cotton (bales):			
Quantity needed as of Sept. 9, 1983 [3]	4,011,915		
Plus: Quality adjustment needs	200,000		
Total needed	4,211,915		
Provided from:			
Producer loans	2,404,828	248.72225	598,134,231
Loan purchases	779,695	248.72225	193,927,495
Added cost of loan purchases (170,265 bales times $248.72225)			42,348,694
CCC inventory [1]	520,685	242.71370	126,377,383
Harvest for PIK 1983 loans	505,707	264	133,770,648
Total	4,211,915		1,094,558,451
Grand total all crops			9,363,275,484

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[1] Calculated as the remaining quantity needed to satisfy PIK needs.

[2] Another 36,180,837 bushels of sorghum valued at about $97.4 million and another 34,766,727 bushels of wheat valued at about $128.5 million were purchased under the loan acquisition program but were not needed to fulfill PIK needs. Instead, these commodities will probably be used to meet other farm program requirements. The Department also paid a premium to acquire these commodities. The extra sorghum cost about $15.3 million more than the average loan rate, and the extra wheat cost about $20.9 million more.

[3] The Sept. 9, 1983 date was used because cotton needs were not available as of Aug. 29, 1983 due to recalculations resulting from the cotton acquisition program.

APPENDIX II.—INCREASED STORAGE COMPENSATION AS A RESULT OF PIK

FARMER-OWNED RESERVE COMMODITIES STORED ON THE FARM

The Code of Federal Regulations relating to the PIK program provides that additional compensation for storage is to be paid for farm-stored reserve commodities that are used to meet PIK entitlements. The payment rate for wheat, corn, and grain sorghum is 15.5 cents per bushel for the loan quantity used and represents 7 months of storage. Only corn, sorghum, and wheat have reserve loans.

We determined the estimated amount for this additional storage compensation in the following manner, assuming that the farm-stored reserve loan quantities actually used for PIK will have the same relationship of reserve to regular loans and farm-stored to warehouse-stored commodities as the total quantities under loan at April 30, 1983.

First, we determined, by commodity, the percentage of loan quantities in reserve as of April 30, 1983, and the ratio of reserve loan quantities that were farm stored. We then applied the reserve loan quantity percentage factor, by commodity, to the latest information available on the total producer loan quantities to be used in meeting PIK entitlements as reported by the Department of Agriculture for August 29, 1983. This gave us the reserve loan quantity for each of the three commodities.

Next, we applied the farm-stored ratio to the reserve loan quantity and multiplied the resulting bushels by the additional storage rate of 15.5 cents per bushel. The result (as scheduled below) shows an estimated $104 million will be paid as additional storage for farm-stored reserve commodities.

ADDITIONAL STORAGE COMPENSATION FOR FARM-STORED RESERVE COMMODITIES

	Producer commodities used		Farm-stored ratio		Farm-stored quantity		7-mo storage rate (cents)		Additional storage amount
Corn:									
Total bushesl (at Aug. 29, 1983)	815,007,081								
Times reserve share	.9281								
Reserve quantity	756,408,072	×	0.7213	=	545,597,142	×	15.5	=	$84,567,557
Sorghum:									
Total bushels	82,263,613								
Times reserve share	.9773								
Reserve quantity	80,396,229	×	.1896	=	15,243,125	×	15.5	=	2,362,684
Wheat:									
Total bushels	207,482,922								
Times reserve share	.9405								
Reserve quantity	195,137,688	×	.5628	=	109,823,491	×	15.5	=	17,022,641
Total additional storage compensation to producers with farm-stored reserve commodities.									103,952,882

POSSIBLE ADDITIONAL STORAGE PAYMENTS

Producers may claim (take title to) their PIK entitlements any time during a 5-month period beginning with the normal harvest date in their area. For those producers having commodities under loan, either farm-stored or warehouse-stored, the Department will pay storage for up to 5 months after the date of entitlement. The Department will also pay storage for up to 5 months for those producers who will receive PIK entitlements that came from the Department's loan purchases and for those producers required to take out 1983 "harvest for PIK" wheat and cotton loans. Storage payments will not be incurred on PIK commodities coming directly from government-owned CCC inventory stocks held prior to the PIK program.

If all eligible producers took immediate possession of their PIK entitlements on the availability dates, no storage costs would be incurred. On the other hand, if all eligible producers waited until the last dates of the 5-month availability periods, maximum storage costs of about $286 million would result. We estimated this amount as follows.

POSSIBLE STORAGE PAYMENTS FOR PRODUCERS

	Quantity	Monthly storage rate [1]	Monthly storage amount
Corn (bushels):			
Total need (Aug. 29, 1983)	1,835,139,524		
Less: CCC inventory quantity	260,055,877		
Storage quantity	1,575,083,647	$0.0220833	$34,783,045
Sorghum (bushels):			
Total need Aug. 29, 1983	193,411,825		
Less: CCC inventory quantity	0		
Storage quantity	193,411,825	.0220833	4,271,171
Wheat (bushels) [2]:			
Total need Aug. 29, 1983	548,683,769		
Less: CCC inventory quantity	0		
Storage quantity	548,683,769	.0220833	12,116,748
Rice (pounds):			
Total need Aug. 29, 1983	4,230,478,582		
Less: CCC inventory quantity	2,163,026,198		
Storage quantity	2,067,452,384	.0007083	1,464,377
Cotton (bales) [2]:			
Total need Sep. 9, 1983	4,211,915		
Less: CCC inventory quantity	520,685		
Storage quantity	3,691,230	1.26	4,650,950
Monthly total storage			57,286,291
Times 5 mo. maximum limit			5
Total maximum storage payments			286,431,455

[1] Monthly storage rates are calculated at 1/12 of the annual rates, as follows:

	Annual rate	Monthly rate
Corn (bu.)	0.265	0.0220833
Sorghum (bu.)	.265	.0220833
Wheat (bu.)	.265	.0220833
Rice (lb.)	.0085	.0007083
Cotton (bale)	15.12	1.26

[2] The storage amounts for wheat and cotton include possible payments to "harvest for PIK" producers. No other crops have "harvest for PIK." The "harvest for PIK" wheat amounts to 152,971,495 bushels for a monthly storage cost of $3,378,115, and the "harvest for PIK" cotton amounts to 506,707 bales for a monthly storage cost of $638,451. Thus, "harvest for PIK" storage payments could range from zero, if all producers took possession on the dates of entitlement, to $20,082,830, if all producers waited to the end of the 5-month storage periods to take possession of their "harvest for PIK" wheat and cotton.

APPENDIX III.—METHODOLOGY FOR COMPUTING INCREASED DIVERSION PAYMENTS

Enrollment in the 1983 farm program with the PIK component is substantially greater then the anticipated enrollment in the originally announced 1983 farm program. While one cannot determine the exact effect that PIK had on producers' decisions to withdraw from the originally announced program, remain in the originally announced program, or participate in PIK, one can reasonably say that enrollment in the 1983 farm program increased after PIK was announced. Because of this increased enrollment, additional acreage was enrolled in the paid land diversion program and increased diversion payments will have to paid as a result of PIK.

To determine the increase in diversion payment attributable to PIK, we relied heavily on Department commodity analysts' estimates of what the farm enrollment and paid land diversion acres would have been under the originally announced program. The analysts had prepared two estimates, one in January and another in July 1983. After discussions with the analysts, it was determined the the July estimate, although lower than the January estimate, was their best estimate of what the enrollment and diverted acres would have been under the original program. We then compared that estimate with the actual PIK program enrollment as of August 1983 to determine increased diversion payments. Because corn and grain sorghum data on the August 1983 PIK enrollment report was combined, we determined increases in corn and grain sorghum diversion payments by using the estimates prepared by the Department's Interagency Feed Grains Estimates Committee in June 1983 rather then the August enrollment report.

Using these sources, we determined the increase in paid land diversion participation and the corresponding increase in units (bushels for wheat, corn, and grain sorghum and pounds for rice and cotton) that would be subject to increased diversion payments. We then applied the 1983 diversion rates to the increased units to determine the increase in diversion payments as a result of PIK. Becuase the cotton program offers a 5-percent voluntary paid land diversion option, the increased cotton diversion payments attributable to PIK were not readily determinable. The following table, therefore, shows the estimated increase in diversion payments based on both no participation in the cotton option and the maximum 5-percent participation.

INCREASED DIVERSION PAYMENTS ATTRIBUTABLE TO PIK

	Increase in paid land diversion acres under PIK	Increase in units subject to diversion payments	Diversion payment rate	Increase in diversion payments attributable to PIK
Commodity:				
Corn	1,300,000	[1] 164,000,000	[1] $1.50	$246,000,000
Sorghum	300,000	[1] 18,000,000	[1] 1.50	27,000,000
Wheat	664,488	[1] 22,127,450	[1] 2.70	59,744,115
Rice	25,625	[2] 126,570,000	[2] .0270	3,417,390
Total (based on no participation in cotton)				336,161,505
Cotton	116,093	[2] 138,136,730	[2] .25	34,534,182
Total (based on 5 percent participation in cotton)				370,695,687

[1] Bushels.
[2] Pounds.

APPENDIX IV.—METHODOLOGY FOR COMPUTING POTENTIAL INTEREST LOST

Producers who take out regular and reserve loans under the CCC price-support program are generally charged interest on their loans. For regular loans, interest is usually charged for the 9-month loan period. For reserve loans, which are issued for 3 years and can be extended for an additional 2 years, interest is charged for only the first year. When commodity prices are strong, producers would most likely repay their loans, including interest, at or before the end of the loan period so they could sell their commodities in the market. When commodity prices are weak, producers tend to hold their loans until maturity and to forfeit their loan collateral at that time rather than pay off the loan. When loan collateral is forfeited, the producer is no longer responsible for paying either the loan principal or accrued interest. Consequently, CCC receives no interest from producers on forfeited loans.

The Department will meet its PIK obligation to PIK participants who have outstanding regular and reserve loans by forgiving their outstanding loans in proportion to their PIK payments. In addition, the Department purchased additional wheat, corn, grain sorghum, and cotton from producers with outstanding loans to meet its PIK obligations. The Department paid the producers for these additional purchases by forgiving the producers' outstanding loans. When it forgives loans, the

Department forgoes any opportunity to recapture the interest producers owe on these loans. Therefore, this forgiven interest income can be considered a PIK cost.

In determining the amount of loans with potential forgiven interest, we used (1) the actual amount of the loans, by crop year, that were forgiven as a result of the Department's additional purchases and (2) an estimate of the amount of loans forgiven to meet producers' PIK payments from outstanding loans. The actual amount of these latter loans will not be known until 5 months after the last PIK availability date has been met, or sometime after March 1984. To estimate the amount of these loans, we determined the universe of outstanding loans, by crop year, as of April 30, 1983, and then weighted the loans that would be forgiven, by crop year, in the same proportion as that reflected in the April 30, 1983, loan figures.

The interest rates we used in calculating the potential interest forgiven were based on the Department's interest schedules which showed the various interest charges by crop year. For crop year 1976 through 1980 loans, the interest rate was fixed for the life of the loan and the interest rates tended to remain the same for the entire crop year. Beginning with crop year 1981 loans disbursed after January 1, 1981, variable monthly interest rates were charged based on the interest rates the U.S. Treasury charged CCC during the month the loan was disbursed. In addition, the interest rates on outstanding 1981 and subsequent crop year loans is reviewed each January and increased or decreased to reflect Treasury rates at that time. Because most outstanding loans would carry the January rate, we based interest rates for crop year 1981 and 1982 loans on the January interest rate the U.S. Treasury charged CCC in the applicable year.

Since all regular loans except those for rice have a maturity of 9 months, we calculated the potential interest forgiven on all corn, grain sorghum, and wheat loans for a 9-month period. Because 1980 and 1981 regular cotton loans have been extended and continue to accrue interest, the potential interest forgiven on these loans is based on 29 months for 1980 loans and 17 months for 1981 loans.[1] Since rice loans have a common maturity date of April 30, and the majority of these loans are issued by October, the potential interest forgiven was calculated for a 7-month period. The potential interest forgiven on reserve loans in based on 1 year. All interest rate calculations were based on simple interest.

The following table summarizes the potential forgiven interest associated with loans forgiven as a result of the 1983 PIK program.

COMPUTATIONS OF POTENTIAL INTEREST FORGIVEN ON PIK LOANS

[Dollar amounts in thousands]

	Producer loans	Acquisitions from loans	Value of loans forgiven [1]	Loan values subject to interest	Interest rate (Percent)	Potential forgiven interest
CORN						
Regular loans:						
1981	$28,164	$34,120	$62,284	$62,284	13.1	$6,119
1982	120,176	137,950	258,126	258,126	9.0	17,424
Total	148,340	172,070	320,410	320,410	....	23,543
Reserve loans:						
1976 [2]	118	13	131	131	7.5	10
1977	4,669	3,912	8,581	8,581	6.0	515
1978	3,549	3,386	6,935	6,935	7.0	485
1979	4,136	3,337	7,473	7,473	9.0	673
1980	30,219	26,219	56,438	[3] 47,456	11.5	5,457
1981	939,479	1,177,049	2,116,538	2,116,528	13.1	277,265
1982	1,065,448	1,005,678	2,071,126	2,071,126	9.0	186,401
Total	2,047,448	2,219,594	4,267,212	4,258,230	....	470,806
Total	2,195,958	2,391,664	4,587,622	4,578,640	....	494,349

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[1] Regular 1980 cotton loans have since been extended for 8 and then 12 additional months. Regular 1981 cotton loans have been extended an additional 8 months. Interest continues to accure on these extensions.

COMPUTATIONS OF POTENTIAL INTEREST FORGIVEN ON PIK LOANS—Continued

[Dollar amounts in thousands]

	Producer loans	Acquisitions from loans	Value of loans forgiven [1]	Loan values subject to interest	Interest rate (Percent)	Potential forgiven interest
SORGHUM						
Regular loans:						
1981	773	1,857	2,630	2,630	13.1	258
1982	3,660	8,585	12,245	12,245	9.0	827
Total	4,433	10,442	14,875	14,875		1,085
Reserve loans:						
1980	4,063	5,642	9,706	[3] 9,635	11.5	1,108
1981	99,233	211,909	311,142	311,142	13.1	40,760
1982	113,685	231,627	345,313	345,313	9.0	31,078
Total	216,981	449,178	666,161	666,090		72,946
Total	221,414	459,620	681,036	680,965		74,031
WHEAT						
Regular loans:						
1981	2,671	12,844	15,515	15,515	13.1	1,524
1982	9,663	46,461	56,123	56,123	9.0	3,788
Total	12,334	59,305	71,638	71,638		5,312
Resserve loans:						
1976 [4]	4,169	38	4,207	4,207	7.5	316
1977	8,843	457	9,300	9,300	6.0	558
1978	6,469	289	6,758	6,758	7.0	473
1979	11,641	1,449	13,090	13,090	9.0	1,178
1980	121,714	122,676	244,390	[3] 141,851	11.5	16,313
1981	152,212	222,245	374,457	374,457	13.1	49,054
1982	418,654	591,195	1,009,848	1,009,848	9.0	90,886
Total	723,702	938,349	1,662,050	1,559,511		158,778
Total	736,036	997,654	1,733,688	1,631,149		164,090
RICE						
Regular loans: 1982 Total	212,652		212,652	212,652	9.0	11,164
COTTON						
Regular loans:						
1980	9,174	608	9,782	9,782	11.5	2,570
1981	255,499	9,421	264,920	264,920	13.1	41,765
1982	33,461	234,496	567,957	567,957	9.0	38,337
Total	598,134	244,525	842,659	824,659		82,672
Total	3,964,194	4,093,462	8,057,657	7,946,065		826,306

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[1] Total may not add due to rounding.

[2] Final settlement date for called corn reserve loans in reserves I, II, and III which had to be settled by May 31, 1983. Settlement was required for all corn reserve loans except those designated for PIK, or accepted under the acquisition program.

[3] The Total 1980 crop reserve loans have been adjusted based on USDA estimates to reflect interest-free 1980 crop loans in reserves II and III.

[4] Some 1976 crop loans entered the reserve program in 1978 and matured in January 1983. These loans can be extended beyond their maturity date and used for PIK.

APPENDIX V.—METHODOLOGY FOR IDENTIFYING LARGE PIK PAYMENTS

At the time of our survey, the Department had not accumulated PIK entitlement information on an individual farm basis in a centralized location. It was available only at the county offices of the Department's Agricultural Stabilization and Conservation Service. We therefore decided that the best way to acquire information on payments to individual farms was by a telephone survey of selected county offices.

To identify county offices that might have farms receiving large PIK entitlements, we initially ranked the states having the largest quantities of PIK payments for each commodity. We selected the states sequentially, starting with the state with the highest quantity, until about half the total nationwide payments was reached.

From these states, we then selected 170 counties to survey, these counties represent the total universe of counties having special PIK participants in the selected states. These are farmers who, expecting that their deficiency and diversion payments would exceed the $50,000 limit set by law, could enter a proportionate share of their acreage in the special PIK program. We chose special PIK participation because we believed it was a good indicator of potentially large payments. In addition, the Department had records showing the counties that had special PIK participants. The scope of our survey selection is shown in the table on page 47.

We then called each of the 170 selected county offices, including some that had larger producers of more than one commodity, and obtained, for each applicable crop, information on up to three farms in each county that had received or were expected to receive the largest quantities of PIK commodities. This resulted in collecting information on 708 farms. Using the results, we then identified for each commodity the farms and operators with the three largest payments. These payments included all PIK contracts entered into by the operator regardless of farm, county, or state. In some cases we had to call additional counties and states to acquire copies of all applicable PIK contracts for these operators.

We then placed a dollar value on these PIK quantities based on a weighted average price per unit. The weighted average price was calculated on the basis of total PIK needs as of August 29, 1983 (Sept. 9, 1983, for cotton), and the cost of providing those PIK needs from farmer-owned loans, CCC loan purchases, and CCC inventory.

PIK PAYMENT SURVEY RESULTS

Commodity and St.	PIK farms in States selected for survey		PIK quantities for selected states		Farms surveyed			Value of PIK quantities for farms surveyed			
	Number	Percent of United States	Number	Percent of United States	Number	Percent of United States	Percent of State surveyed	Quantity	Amount	Percent of United States	Percent of State surveyed
Corn/sorghum (bushels):											
Illinois	89,622	10.43	262,155,332	12.92	30	0.003	0.033	2,677,602	$7,613,868	0.132	1.021
Iowa	112,160	13.05	376,851,464	18.58	24	.003	.021	2,103,599	5,981,668	.103	.558
Kansas	59,183	6.89	44,166,063	2.18	36	.004	.061	898,158	2,639,004	.046	2.034
Nebraska	62,171	7.24	214,438,665	10.57	102	.012	.164	6,527,645	18,603,782	.321	3.036
Texas	43,840	5.10	51,040,020	2.52	74	.009	.169	1,513,902	4,448,207	.077	2.966
Total	366,976	42.71	948,651,544	46.77	266	.031		13,720,906	39,286,529	.679	
Wheat (bushels):											
Kansas	89,469	15.51	51,537,377	9.39	42	.007	.047	1,273,034	4,972,280	.232	2.470
North Dakota	54,456	9.44	83,573,485	15.23	27	.005	.050	1,135,014	4,433,194	.207	1,358
Oklahoma	45,245	7.84	55,051,939	10.03	21	.004	.046	552,118	2,156,490	.101	1.003
Texas	44,672	7.74	46,231,138	8.43	85	.015	.190	1,749,189	6,832,070	.319	3.784
Total	233,842	[1] 40.54	236,393,939	43.08	175	[1] .030		4,709,355	18,394,034	[1] .858	
Rice (pounds):											
Arkansas	10,147	51.09	1,370,720,391	32.40	72	.363	.710	103,603,613	8,302,794	2.449	7.558
California	1,594	8.03	873,720,092	20.65	26	.131	1.631	144.988,874	11,619,408	3.427	16.594
Total	11,741	59.12	2,244,440,483	53.05	98	[1] .493		248,592,487	19,922,202	5.876	
Cotton (Bales):											
California	4,042	3.45	791,419	18.79	21	.018	.520	103,734	26,957,554	2.463	13.107
Texas	53,125	45.35	1,316,209	31.25	148	.126	.279	75,115	19,520,279	1.783	5.707
Total	57,167	48.80	2,107,628	50.04	169	.144		178,849	46,477,833	4.246	

[1] Does not add due to rounding.

TOTAL PIK PAYMENTS TO THE OPERATORS OF THE FARMS RECEIVING THE 3 LARGEST PIK PAYMENTS FOR EACH CROP [1]

Crop and farm	For crop on selected farm	Other crops on selected farm	Operator's other farms	Total
Cotton:				
A	$3,636,388	$114,875		$3,751,263
B	2,543,886	49,706		2,593,592
C	2,506,984			2,506,984
Total	8,687,258	164,581		8,851,839
Rice:				
A	2,190,218			2,190,218
B	1,548,291	192,537		1,740,828
C	1,229,346		$92,067	1,321,413
Total	4,967,855	192,537	92,067	5,252,459
Corn:				
A	1,993,890		1,466,749	3,460,639
B	1,427,204	8,630		1,435,834
C	936,125	5,074		941,199
Total	4,357,219	13,704	1,466,749	5,837,672
Wheat:				
A	637,146		32,329	669,475
B	548,100	8,218	33,188	589,506
C	421,945		2,079	424,024
Total	1,607,191	8,217	67,596	1,683,005
Sorghum:				
A	290,189	435,887	127,998	854,074
B	250,115	68,076	15,197	333,388
C	241,541	94,915	168,251	504,707
Total	781,845	598,878	311,446	1,692,169

[1] The dollar value is calculated by multiplying the PIK quantities from CCC contracts times the weighted average price per unit. The weighted average price is calculated on the basis of PIK needs as of Aug. 29, 1983 (Sept. 9, 1983, for cotton) and the cost of providing the PIK commodities from loans, loan purchases, and CCC inventory.

[Memorandum]

GENERAL ACCOUNTING OFFICE,
Washington, D.C., October 31, 1983.

To: Director, RCED.
Subject: Questions Regarding the Legality of the Payment-in-Kind Program (B-211462–O.M.; Code 022866).

This responds to questions posed by your staff regarding the authority of the Department of Agriculture and the Commodity Credit Corporation (CCC) to conduct the Payment-in-Kind (PIK) program.

The PIK program is a land diversion program established by regulations published on January 12, 1983. The program, conducted by the Department of Agriculture through the CCC, makes payments in the form of commodities to producers of wheat, feed grains, upland cotton, and rice to divert acreage from the production of these crops for the 1983 crop year and to devote that acreage to approved conservation uses. Payments to participating producers are made from existing stocks of CCC commodities. Also, CCC has acquired additional stocks of commodities specifically to meet PIK entitlements.

Your questions concerning the PIK program and our answers, in brief, are as follows:

Question 1. Does the Department of Agriculture have statutory authority to conduct a land diversion program featuring payments-in-kind rather than cash payments?

Answer. Yes; the authority of the Secretary of Agriculture under the Agricultural Act of 1949, as amended, to make land diversion payments to producers of wheat, feed grains, upland cotton, and rice, in conjunction with CCC's statutory authority, is sufficient to support a payment-in-kind program. The relevant statutory provisions do not define the term "payment" or specify a method of payment. The concept of "payment" generally is understood to encompass payments-in-kind as well as in cash. Nothing in the language or legislative history of the statutes suggests that a more restrictive interpretation was intended for land diversion payments.

Question 2. Does the statutory $50,000 limitation on the total amount of payments a person may receive under programs for wheat, feed grains, upland cotton, and rice apply to payments in commodities by the CCC under the PIK program?

Answer. Yes, the term "payment" as used in the $50,000 limitation applies generally to land diversion "payments" under the Agricultural Act of 1949, as amended; it makes no distinction between payments in cash or in-kind. The statutory limitation and the authorization for land diversion payments must be read together. Thus, if commodities qualify under the authorization for land diversion "payments," as we believe they do, they are likewise subject to the $50,000 limitation on such "payments."

The Agriculture Department maintains that the limitation does not apply to in-kind payments because "a major focus" prompting its enactment was congressional concern over budgetary impacts—a concern which, in the Department's view, has no relevance to in-kind payments. However, the legislative history clearly shows that Congress' concern went well beyond budgetary impacts; it evidences a more generalized intent to preclude what were perceived as inordinate and inequitable payments to any single producer. This concern seems just as relevant to in-kind payments. At the very least, the "focus" in the legislative history relied on by the Department is insufficient to justify reading into the limitation a distinction between cash and in-kind payments which is nowhere suggested in the statute itself.

In connection with our conclusion that the payment limitation does apply to payments in commodities under the PIK program, we must point out that the GAO does not have authority to render opinions binding on the CCC, or to take exception to its payments. Rather, CCC has authority under 15 U.S.C. § 714b to determine the character and necessity for its obligations and expenditures and to settle and adjust its accounts. See B-200103, March 5, 1983, B-200645, September 9, 1981. However, GAO under 31 U.S.C. § 9106 does have authority to report to Congress any activity or expenditure by the CCC which we regard as illegal. B-200103, March 5, 1981.

Question 3. Does the prohibition against the CCC reselling any of its stocks of wheat or feed grains at less than 110% of the then current price apply to the disposition of those commodities under the PIK program?

Answer. No, transfer of commodities for PIK payments is not the transfer of property for valuable consideration necessary to constitute a sale.

For a detailed discussion of our conclusions, please refer to the attached legal analysis.

Harry R. Van Cleve,
Acting General Counsel.

Attachment.

Legal Analysis of the PIK Program

DIGESTS

(1) Authority of Secretary of Agriculture under Agricultural Act of 1949, as amended, to make land diversion "payments" to producers of wheat, feed grains, upland cotton, and rice, in conjunction with broad statutory authority given Commodity Credit Corporation, provides sufficient legal support to conduct a payment-in-kind program. Use of property instead of cash payment medium falls within general concept of "payment"; Congress gave no indication that more restrictive concept was intended for land diversion payments,

(2) Term "payment" in $50,000 payment limitation in section 1101 of Agriculture and Food Act of 1981 applies to payments in commodities under Payment-in-Kind (PIK) program as well as payments in cash. Payment limitation applies to PIK payments even though they are made under statutory authority of Commodity Credit Corporation and out of its assets since the related statutory provisions must be read together.

(3) Transfer of commodities for payments under Payment-in-Kind (PIK) program is not transfer of property for valuable consideration necessary to constitute a sale. Therefore prohibition in section 1001 of Agriculture and Food Act of 1981 against

Commodity Credit Corporation reselling stocks of wheat or feed grains at less than 110 percent of current price level does not apply to PIK payments.

Question 1. Does the Department of Agriculture have statutory authority to conduct a land diversion program for producers of wheat, feed grain, upland cotton, and rice utilizing payments-in-kind?

Answer. Yes; the statutory authority of the Secretary of Agriculture to make land diversion payments to producers of wheat, feed grains, upland cotton, and rice, in conjunction with the broad statutory authority given the Commodity Credit Corporation, provides sufficient authority for the Secretary of Agriculture to conduct a payment-in-kind program.

DISCUSSION

In its regulations establishing the Payment-in-Kind (PIK) program,[1] the Department of Agriculture relies on the general statutory authority of the Secretary of Agriculture to make land diversion payments to producers of wheat, feed grains, upland cotton, and rice under the Agricultural Act of 1949, as amended.[2] The regulations also rely on the broad authority given to the Commodity Credit Corporation (CCC) in its statutory charter[3] to support the price of agricultural commodities, stabilize agricultural commodity markets, and remove and dispose of agricultural surpluses.

A memorandum dated February 24, 1983, from the General Counsel of the Department of Agriculture submitted during hearings before the House Committee on Appropriations, Subcommittee on Agriculture, Rural Development and Related Agencies specifies the sections of the Agricultural Act of 1949 which, the General Counsel contends, provide statutory authority for the PIK program.[4] Each of the cited sections contains a provision authorizing the Secretary to make "land diversion payments" for a particular commodity if the Secretary determines that such payments are necessary to assist in adjusting the total national acreage devoted to that commodity for the 1982 through 1985 crops. For example, the section dealing with rice provides:

"The Secretary may make land diversion payments to cooperators, whether or not a set-aside for rice is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of rice to desirable goals.* * *" 7 U.S.C. § 1441(h)(6).

In addition, each of these sections authorizes the Secretary to issue regulations necessary to carry out programs under that section and provides for the implementation of those programs through the CCC.[5]

As stated in the General Counsel's memorandum and the PIK regulations, authority for the PIK program is also found in the statutory charter of the CCC, which gives the Corporation broad authority to support the price of agricultural commodities, stabilize agricultural commodity markets, and remove and dispose of agricultural surpluses. The CCC was created "for the purpose of stabilizing, supporting, and protecting farm income and prices, [and] of assisting in the maintenance of balanced and adequate supplies of agricultural commodities * * *." 15 U.S.C. § 714. The CCC functions as an agency of the United States under the Department of Agriculture and is subject to the general supervision and direction of the Secretary of Agriculture. 15 U.S.C. § 714.

The Corporation is specifically authorized in 15 U.S.C. § 714c to use its general powers to:

"(a) Support the prices of agricultural commodities through loans, purchases, payments, and other operations.

* * * * * * *

"(d) Remove and dispose of or aid in the removal or disposition of surplus agricultural commodities."

In the course of these operations, the Corporation has the general authority to make final and conclusive settlement of claims, 15 U.S.C. § 714b(k), and to make loans and advances of its funds as deemed necessary, 15 U.S.C. § 714b(1). It also has general powers as are necessary or appropriate for the exercise of powers specifically vested in the Corporation, and incidental powers as are customary in corporations, 15 U.S.C. § 715b(m). Additionally, the Corporation is authorized to use in the conduct of its business all of its funds and other assets and all funds or other assets which may be transferred or allocated to it, borrowed by it, or which are otherwise acquired by it. 15 U.S.C. § 714f.

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[1] Interim Rule 48 Fed. Reg. 1476, Jan. 12, 1983; Final Rule 48 Fed. Reg. 9232, Mar. 4, 1983.

[2] 7 U.S.C. § 1421 et seq.

[3] 15 U.S.C. § 714 et seq.

[4] 7 U.S.C. §§ 1441, 1444, 1444d and 1445b-1.

[5] 7 U.S.C. § 1441(h)(11), (12); 7 U.S.C. § 1444(14), (15); 7 U.S.C. § 1444d(g), (h); 7 U.S.C. § 1445b-1(g), (h).

Based on the above provisions of the Agricultural Act of 1949 and the charter of the CCC, the Secretary of Agriculture clearly has the statutory authority to establish land diversion programs for wheat, feed grains, upland cotton, and rice to be conducted through the CCC. The question is whether the "payments" authorized under these programs may be made in-kind as well as in cash.

We begin our analysis of this question with recognition of the principle that "[a] fundamental concern of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, comtemporary, common meaning." *Perrin* v. *United States,* 444 U.S. 37, 42 (1979); see generally, 2A Sutherland Statutory Construction §§ 47.28–47.31 (Sands ed. 1973).[6] The concept of "payment" is not restricted to money in its ordinary sense or in a commercial or legal sense:

" 'Payment' is not a talismanic word or a technical term. It originated in commercial life rather than in law, and may have many meanings, depending on the sense and context in which it is used. In a broad sense, payment is the fulfillment of a promise or the performance of an agreement. In a more restricted legal sense, it is (1) the discharge of an obligation in whole or in part, (2) by the actual or constructive delivery, (3) *of money or its equivalent, such as property,* (4) by the obligor or someone for him, (5) to the obligee, (6) for the purpose of extinguishing the obligation in whole, or in part, and (7) its acceptance as such by the obligee." 60 Am. Jur. 2d, Payment, § 1, p. 611. (Emphasis supplied.)

"Payment does not necessarily import the delivery of money, and an agreement by which the obligor may satisfy the obligation in property or services is valid and enforceable. The consent of a creditor to accept payment in a medium other than money may be expressed or clearly implied. * * *" Id., § 32, p. 633.

"Payment may be made in merchandise or any commodity other than money which the parties to the transaction agree shall be accepted as payment * * *." Id., § 33, p. 633–34.

Thus, unless the Agricultural Act of 1949 or its legislative history evidences a more restrictive intent, the concept of "payment" is broad enough to encompass payments-in-kind. The memorandum of February 24, 1983, by the Department's General Counsel states:

"* * * Nothing in the 1949 Act or the legislation amending it suggests in any way that the compensation paid to producers for such voluntary land diversion cannot be in kind as well as in cash."

Our research of the Agricultural Act of 1949, as amended, and the CCC charter statute confirms this statement. These statutes do not define the term "payment." Moreover, we have found no indication in the legislative history that Congress intended to limit the form of payment in land diversion programs authorized under these statutes to cash.

We also have examined the legislative histories of three prior statutes which contained provisions specifically authorizing the Department to conduct programs which provided for in-kind payments.[7] We found no indication that the Congress believed in-kind payments under these programs would not have been permitted in the absence of an express statutory authorization. In this regard, we note that the 97th Congress considered legislation which would have expressly authorized the current PIK program (H.R. 7439 and S. 3074). That legislation failed to pass the Senate in the waning days of the 97th Congress. Nevertheless, several Senators urged the Secretary of Agriculture to implement a PIK program administratively by use of his existing statutory authority.[8] The legislative history on the House side likewise indicates a recognition that the Secretary's existing authority could accommodate a PIK program; the House bill was designed merely to remove two "potential obstacles" to such a program.[9]

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[6] Also see *United States* v. *Swift & Co.,* 152 F. Supp. 738, 754 (D. Md. 1957), aff'd, 257 F.2d 787 (4th Cir.), cert. denied, 358 U.S. 837 (1958), which applies this principle in the context of the Agricultural Act of 1949. The *Swift & Co.* case is discussed in more detail hereafter.

[7] Pub. L. No. 87-5, Mar. 22, 1961, 75 Stat. 6; Pub. L. No. 87-128, Aug. 8, 1961, 75 Stat. 244; Pub. L. No. 87-803, Oct. 11, 1962, 75 Stat. 910.

[8] See 128 Cong. Rec. S. 16069–70 (daily ed., Dec. 23, 1982) (remarks of Senators Percy, Dole and Huddleston).

[9] Id., H. 10317 (Dec. 18, 1982) (remarks of Mr. de la Garza). These two potential obstacles—the $50,000 payment limitation and the 110 percent price level restriction on CCC resales—are the subjects of questions 2 and 3, hereafter.

Therefore we conclude that in-kind payments are permissible under the land diversion programs authorized by the Agricultural Act of 1949, as amended, and CCC charter statute.

Question 2. Does the statutory $50,000 limitation on the total amount of "payments" a person may receive under programs for wheat, feed grains, upland cotton, and rice apply to payments in commodities by the CCC under the PIK program?

Answer. Yes; the term "payment" in the statutory payment limitation encompasses payments in commodities as well as in cash. The payment limitation applies to PIK payments even though they are made under the statutory authority of the CCC and out of CCC assets.

DISCUSSION

Section 1101 of the Agriculture and Food Act of 1981 [10] sets a $50,000 limit on the total amount of "payments" for wheat, feed grains, upland cotton and rice a person can receive from programs under the Agriculture Act of 1949. The interim rules promulgated by the Department establishing the PIK program, state that "[p]ayments in kind under the program established by this part shall not be considered payments for purposes of the payment limitations imposed by section 1101 of the Agriculture and Food Act of 1981."[11] In a document submitted to the Subcommittee on Agriculture, Rural Development and Related Agencies, House Committee on Appropriations [12] the Department argues that, in enacting the payment limitation, the continuing objective of Congress has been to "prevent excessive payments out of the Treasury to any one farmer." In the Department's view, this objective is not relevant under the PIK program:

"* * * The extent of the savings to be realized by the Treasury was a major focus of the debate in both houses of Congress prior to the enactment of the initial limitations on payments in 1970, and that focus has not changed.

"These budgetary concerns do not apply when payments are made in kind from huge surpluses owned by the government or pledged as security for nonrecourse price support loans from the government. This is especially so when, as in the PIK program, the payments in kind are made as compensation for reduced production and will reduce the cost of farm programs by billions of dollars. The Department does not believe that Congress intended, in enacting the payment limitations, to limit the use of commodities owned by the commodity Credit Corporation in this kind of a program to control production and reduce program costs."

Thus, the Department concluded that the section 1101 payment limitation was not intended to, and did not apply to payments in commodities.

The interpretation given a statute by the governmental body responsible for interpreting or administering the statute is entitled to considerable deference. See, e.g., *Ford Motor Credit Company* v. *Cenance,* 452 U.S. 155, 158 (1981); *Zenith Radio Corporation* v. *United States,* 437 U.S. 443, 450 (1977); *Udall* v. *Tallman,* 380 U.S. 1, 16 (1965). However, "[t]his general principle of deference, while fundamental, only 'sets the framework for judicial analysis; it does displace it.' " *United States* v. *Vogel Fertilizer Col,* 455 U.S. 16, 24 (1981); *United States* v. *Cartwright,* 411 U.S. 546, 550 (1973). Further, such deference is constrained "by our obligation to honor the clear meaning of a statute, as revealed by its language, purpose, and history." *Southeastern Community College* v. *Davis,* 442 U.S. 397, 411 (1979); *Teamsters* v. *Daniel,* 439 U.S. 551, 566 n. 20 (1979).

The first step in an analysis of the statute is to look to its language. *Teamsters* v. *Daniel,* 439 U.S. 551, 558. The section 1101 limitation provides no positive definition of the term "payments." However, it does expressly exclude from the scope of "payments" covered by the limitation, among other things, "any part of any payment that is determined by the Secretary of Agriculture to represent compensation for resource adjustment *(excluding land diversion payments)* or public access for recreation." 7 U.S.C. § 1308(3). (Emphasis added.) The clear implication of this provision is that land diversion "payments" are subject to the limitation. Indeed, we have been informally advised that the Department also regards the limitation as applicable, and has applied it, to land diversion payments made in cash. As we understand it, the Department's position is that the limitation does not apply here solely because the payments are being made in-kind.

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[10] Section 1101, codified at 7 U.S.C. § 1308, provides in pertinent part:

"Nothwithstanding any other provision of law—

"(1) The total amount of payments (excluding disaster payments) that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 for wheat, feed grains, upland cotton, and rice shall not exceed $50,000 for each of the 1982 through 1985 crops.

* * * * * * *

"(3) The term 'payments' as used in this section shall not include loans or purchases, or any part of any payment that is determined by the Secretary of Agriculture to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation."

[11] 48 Fed. Reg. 1476, 1479 (Jan. 12, 1983) (to be codified at 7 C.F.R. § 770.6(a)).

[12] "Agriculture, Rural Development and Related Agencies Appropriations for 1984: Hearings Before the Subcommittee on Agriculture, Rural Development, and Related Agencies of the House Committee on Appropriations" 98th Cong., 1st sess., p. 3 at 765 (1983).

A principle of statutory construction is that when the same terms are used in related statutory provisions having the same subject matter, they receive the same meaning. See generally, 2A Sutherland Statutory Construction §§ 51.01–51.02 (Sands ed., 1973). Under this principle, without a clear indication to the contrary in the legislative history or the purpose of the provisions, the meaning of the term "payment" as used in the provisions authorizing the Secretary to make land diversion payments would be interpreted as being the same as the term as used in the section 1101 limitation, which applies to such land diversion payments. Thus the statutory scheme on its face indicates that the section 1101 limitation applies to land diversion payments generally; it gives no hint of a distinction based on the method of payment.

As noted previously, the Department maintains that enactment of the payment limitation was prompted by concern over budgetary impacts, a concern which they suggest has no application to in-kind payments. While the legislative history does indicate concern over budgetary impacts, it does not provide a basis, in our view, for reading into the payment limitation a distinction which is nowhere suggested by the statutory language or the basic scheme of the statutes.[13]

The report of the Senate Committee on Agriculture, Nutrition, and Forestry, S. Rep. No. 97-126, at 110 (1981) in discussing the payment limitation states:

"Any single producer should not receive an inordinate share of direct payments, simply as a matter of equity. Of course, budget exposure to the government resulting from these non-recoverable outlays should be limited in the interest of the taxpayer. The payment programs need some framework within which to function.

"The Committee believed that reasonable limitations were needed consistent with the previous adoption of target prices and deficiency payment authority. A payment limitation provision which is very similar to that now in effect for the 1981 crop was adopted by the Committee for each crop year through 1985."

The language of the Senate report indicates, as stated by the Department, that one of the objectives of the Committee in recommending a continuation of the payment limitation was the desire to limit budget expenditures. However, it is also clear that the purposes of the payment limitation went well beyond budgetary impacts. The Senate report indicates that the Committee sought to limit, for equitable reasons, inordinate payments to any single producer. We have found nothing in the legislative history of section 1101 to indicate that the concerns expressed by the Committee over inordinate or inequitable payments under agricultural programs were limited only to the context of their budgetary impact or that those concerns would apply only to programs utilizing cash payments rather than in-kind payments.

As stated in the Senate report, the section 1101 limitation was an extension of the previous statutory limitation on the amount of payments an individual could receive under agricultural programs.[14] This payment limitation was originally established by section 101 of the Agricultural Act of 1970.[15] The legislative history of this provision indicates that the payment limitation was added by the House Committee on Agriculture in the face of growing pressure for some type of limitation. See H.R. Rep. No. 91-1329 at 16 (1970).

The debate on this provision in both the House and Senate focused primarily on what maximum level of payment should be permitted under the proposed limitation rather than whether there should be a limitation of payments.[16] As in the legislative history of the current payment limitation, the objectives of the Congress in enacting the original payment limitation were not limited to current budget expenditures. The debate indicates that supporters of a payment limitation were deeply concerned by what were regarded as excessively large payments going to some individual and large corporate farms under agriculture programs that were originally intended to help protect family farms from market fluctuations. The statement of Congressman Mayne typifies the sentiments of supporters of a payment limitation:

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[13] While not a decisive consideration, we also question Agriculture's attempt to discount the budgetary impact of the PIK program in view of RCED's proposed testimony on this point. For example, contrary to Agriculture's statement that PIK payments will be made from CCC's "huge surpluses," RCED's proposed testimony indicates that CCC has been required to purchase additional commodities to meet PIK entitlements.

[14] Pub. L. 95-113, title I, § 101, Sept. 29, 1977, 91 Stat. 917.

[15] Pub. L. No. 91-524, Nov. 30, 1970, 84 Stat. 1358, title I, sec. 101.

[16] In reviewing the legislative history of both the section 101 and 1101 payment limitations, it should be recalled that since the enactment of the original payment limitation up to and including the period of consideration of the current payment limitation, payments under the affected programs authorized by the Agricultural Act of 1949 were made only in cash.

"One of the principal reasons for ending huge payments is that they tend to throw a shadow on all payments to farmers, no matter how necessary and legitimate, thereby discrediting the entire farm program and jeopardizing its continuance. The taxpayers of this country rightfully resent tax funds being drained off in individual payments of hundreds of thousands, even millions of dollars, and part of this resentment is unfairly rubbing off on the small and moderate-sized farmers for whom this program was originally intended. These large payments are jeopardizing the very existence of the entire farm program, and must be eliminated now if the program is to command sufficient public support for continuance on a reasonable basis. * * *" 116 Cong. Rec. 27457 (1970).

The concerns in this statement were echoed repeatedly in the floor debate in both Houses of Congress.[17] It is clear that supporters of a payment limitation saw it as a means to impose a comprehensive limitation on what were regarded as excessive or inequitable payments. The only exceptions to this limitation were expressly stated in the provision.

In conclusion, we have found nothing in the language of section 1101 or in its legislative history, or in the legislative history of the original section 101 payment limitation, to indicate that the concerns and objectives of the Congress in enacting a payment limitation were confined only to their budgetary impact or that for any other reason the concerns and objectives of Congress would apply only to payments.[18] In the absence of such evidence, we conclude the Congress intended the term "payment" to have the same commonly accepted meaning as in the provisions authorizing the Secretary to make land diversion payments. Thus the section 1101 payment limitation does apply to payments in commodities made under the Agricultural Act.

As mentioned earlier, the PIK program relies on the statutory charter of CCC, as well as the Agricultural Act of 1949. We do not believe that reliance on CCC's authority or the fact that in-kind payments are made from CCC stocks affects the application of the payment limitation.

The Agriculture Act of 1949 and CCC's charter complement each other and must be read together. This is made clear by section 401(a) of the 1949 Act, 7 U.S.C. § 1421(a), which states that the Secretary of Agriculture "shall provide the price support authorized or required herein [which includes land diversion payments] through the Commodity Credit Corporation and other means available to him." In addition to this general provision, each of the commodity-specific authorizations in the 1949 Act, as amended, used for the PIK program requires that CCC be used to carry out the land diversion program. See 7 U.S.C. §§ 1441(g)(11), 1444(g)(15), 1444d(h), and 1445b-1(h).

The courts and the Attorney General also have recognized that the price support authorities of the agricultural acts and CCC's authority must be read together. The question whether the CCC's general statutory authority could be used to justify an agricultural price support program for milk and butterfat which was beyond the scope of the applicable milk and butterfat price support statute was presented in

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[17] See generally, 116 Cong. Rec. 27459-27471 (1970); id., 31778-31786.

[18] The Department points to the statement of Congressman Paul Findley made in Hearings on S. 3074 before the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices, Senate Committee on Agriculture, Nutrition, and Forestry, 97th Cong., 2d sess., 12 (Dec. 9, 1982), in support of its contention that the section 1101 payment limitation does not apply to payments-in-kind:

"I note that the administration is asking section 2 of a bill that is now before the House Agriculture Committee, and I presume before this committee, for language which says that any land diversion payments-in-kind made by the Secretary shall not be sales for purposes of sections 110 and 407 of the Agriculture Act of 1981. Well, they are not sales for the purposes of sections 110 and 407, and they certainly should not be construed as payments for purposes of section 1101. I can claim some parentage of section 1101, which is a limitation on payments to individual farmers. It was never my thought that this limitation would apply to any payment-in-kind program."

However, since this statement is not part of the congressional deliberations leading to the enactment of the statutory payment limitation provisions, we cannot regard it as controlling in our interpretation of the section 1101 payment limitation. See, e.g., *United States* v. *Clark*, 445 U.S. 23, 33 note 9 (1980); *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 170 (1968); see also, *Weinberger* v. *Rossi* 102 S. Ct. 1510, 1517 (1982).

United States v. *Swift & Company,* 152 F. Supp. 738 (D. Md. 1957), aff'd, 257 F.2d 787 (4th Cir.) cert. denied, 358 U.S. 837 (1958). The district court determined that milk and butterfat price support transactions conducted by the Department of Agriculture through the CCC did not constitute "purchases" within the authorization of an agricultural price support statute. The Defendants and the Department of Agriculture asserted that additional legal authority for the price support transactions could be found under the broad statutory powers granted to the CCC and the broad discretionary authority of the Secretary to use the CCC to conduct price support programs. The district court rejected this argument:

"Agriculture and defendants argue that 'keeping the pipelines full' is necessary to maintain a steady level of consumption, and that increasing the domestic consumption of agricultural commodities is an objective authorized by the CCC Charter Act, 15 U.S.C.A. § 714c. The CCC Charter Act and the Agricultural Act of 1949 must be read together, although [sic] the broad powers given to CCC, so that it could carry out many different statutory programs, cannot cancel any limitations which Congress placed on the Department in carrying out a particular program." 152 F. Supp. at 752.

Both the district court and the court of appeals in the *Swift & Co.* case noted with interest a prior opinion of the Attorney General, 41 Op. Att'y Gen. 183 (1954), which also addressed the question of whether the broad powers of the CCC could be used as authority for milk and butterfat price support transactions which were not authorized under the appropriate price support statute. The Attorney General agreed with the conclusion of the Department of Agriculture's own solicitor that the CCC charter act did not authorize such transactions:

"* * * Section 5(a) of the Commodity Credit Corporation Charter Act (62 Stat. 1072) empowers the Corporation to 'support the prices of agricultural commodities through loans, purchases, payments, and other operations.' This provisions was not changed when the Charter Act was amended in other respects by Public Law 85, 81st Cong., 63 Stat. 154. Section 401(a) of the Agricultural Act of 1949 (63 Stat. 1054) directs that 'the Secretary shall provide the price support authorized or required herein through the Commodity Credit Corporation and other means available to him.' However, I agree with your Solicitor that the broader general powers lodged in the Commodity Credit Corporation under the Charter Act cannot reasonably be deemed to enlarge the specific powers granted in section 201(c), which treats specially with this subject, for to do so would be to nullify pro tanto the plan legislative provision and intent with respect to the methods by which the support program for these particular commodities is to be effectuated." 41 Op. Att. Gen. at 186–187.

Finally, we understand that cash-payment land diversion programs have been carried out through CCC and that the $50,000 limitation has been applied to such cash payments. Thus the basic issue is really no different under CCC's authority than it is under the Agricultural Act of 1949, i.e., does the fact that land diversion payments are made inkind rather than in cash render the payment limitation inapplicable? For the reasons stated above, we believe that it does not.

Question 3. Does the prohibition against the CCC reselling any of its stocks of wheat or feed grains at less than 110% of the then current price apply to the disposition of those commodities under the PIK program?

Answer. No, transfer of commodities for PIK payments is not the transfer of property for valuable consideration necessary to constitute a sale.

DISCUSSION

Section 1001 of the Agriculture and Food Act of 1981 prohibitis CCC from selling any of its stocks of wheat or feed grains at less than 110 percent of the then current price level as defined in that section.[19] As we noted previously "[a] fundamental concern of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin* v. *United States,* 444 U.S. 37, 42 (1979). Section 1001, by its own terms, applies only to situations where there is a sale of the subject commodities. While the word "sale" can be variously defined, at a minimum it involves "the transfer of the property in a thing for a price in money or estimated in money, or in money or its equivalent, or for valuable consideration * * *."[20]

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[19] Pub. L. No. 97-98, Dec. 22, 1981, title X, § 1001, 95th Stat. 1259, codified at 7 US.C. § 1445e(f) provides in pertinent part:

"(f) Notwithstanding any other provision of law, except as otherwise provided under section 302 of the Food Security Wheat Reserve Act of 1980 and section 208 of the Agricultural Trade Suspension Adjustment Act of 1980, whenever the program authorized by this section is in effect, the Commodity Credit Corporation may not sell any of its stocks of wheat or feed grains at less than 110 per centum of the then current price level at which the Secretary may encourage loans with respect to the commodity prior to the maturity dates of such loans, as determined under clause (5) of the third sentence of subsection (b) of this section * * *.

The transfer of commodities under the PIK program operates as a payment to farmers voluntarily participating in a Department land diversion program. It is not the transfer of property for money or valuable consideration essential for a sale since the participating farmer is being paid not to plant his crops. The fact that the payment to the farmer for holding his land out of production is made in-kind rather than in cash does not operate to convert the in-kind payment of an agricultural subsidy into a sale of commodities. Nothing in the legislative history of this provision indicates that Congress intended to depart from the fundamental elements of a sale in enacting this restriction.

Chairman STARK. Our next will be a representative, Mr. J. Dawson Ahalt, the Deputy Assistant Secretary, Office of Economics, U.S. Department of Agriculture, and, Mr Ahalt, you are accompanied by members of your staff in the Department of Agriculture.

After you are seated would you introduce them for the clerk please.

STATEMENT OF J. DAWSON AHALT, DEPUTY ASSISTANT SECRETARY, OFFICE OF ECONOMICS, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY JOHN E. NOAKES, ACTING GENERAL COUNSEL; JAMES F. HINCHMAN, ASSOCIATE GENERAL COUNSEL; AND MIKEL ROLLYSON, DEPUTY TAX LEGISLATIVE COUNSEL, DEPARTMENT OF TREASURY

Mr. AHALT. Thank you, Mr. Chairman.

Chairman STARK. Mr. Ahalt, we have your prepared statement and without objection it will appear in the record in its entirety.

[The prepared statement follows:]

STATEMENT OF J. DAWSON AHALT, DEPUTY ASSISTANT SECRETARY FOR ECONOMICS, DEPARTMENT OF AGRICULTURE

Mr. Chairman, I appreciate the opportunity to visit with you and other subcommittee members today to discuss issues related to the Payment-in-Kind (PIK) program. While the PIK program received national attention and the discussion over its impacts and costs may continue for some time, there is little question as to the final results. Agriculture is in much better economic condition today than it was a year ago, and many farmers, both large and small, have been saved. The PIK program served not only as an effective acreage reduction program but also as an effective buffer for farmers and the farm economy as a whole against the impact of the worst drought in fifty years.

In examining policy options in late 1982, it was clear that any policy option chosen had to accomplish a number of objectives:

(1) Retire a substantial amount of acreage, enough to signficantly reduce production;

(2) reduce stocks to more reasonable levels without jeopardizing world and domestic needs;

(3) cut unprecedented levels of currrent government budget outlays for price support programs;

(4) help improve net farm income; and

(5) encourage better soil conservation practices.

If we look at the results in light of these objectives, the PIK program is impressive. It must, of course, be recognized that the drought also had significant impact in 1983. The results have been as follows:

(1) PIK accomplished the largest acreage diversion in history. Planted corn acreage was reduced 30 percent, and harvested wheat acreage was reduced more than 20 percent. More than a third of all acres eligible for PIK were taken out of production this year.

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[20] 77 C.J.S. 576, Sales § 1 (1952).

(2) PIK, in combination with the drought, has lowered our surpluses to more reasonable levels, except for wheat, with ample supplies to meet domestic and foreign needs.

(3) PIK will help reduce current and future farm progam spending. Fiscal year 1984 price support net spending could be reduced to about $10 billion—a dramatic reduction from the $18.8 billion estimated in fiscal year 1983—due, in part, to reduced storage costs, decreased loan commitments, and the improved price situation as a result of PIK.

(4) Farm income prospects for this and next year are improved. Net farm income in 1983 is estimated to be $24-26 billion, up from $22 billion in 1982. PIK helped trigger this in two ways. It lowered production costs because it reduced plantings, and, again, it improved farm prices.

(5) With nearly 80 million acres set aside for conservation use, it is expected that PIK improved the quality of the environment and perhaps increased the quantity of wildlife by reducing soil erosion, conserving water, and decreasing chemical contamination.

In February of 1983, this Subcommittee held hearings on the PIK program, enabling Congress to move expeditiously in enacting legislation providing reasonable tax treatment for PIK program participants. Generally, Congress provided that recognition of income from commodities received in the 1983 PIK program could be deferred from the date the commodities are made available to the producer until the date of sale by the producer, as in the case of normal farm marketings. In addition, real property withdrawn from production in exchange for a PIK payment will be treated as used in active farming for estate tax purposes.

While this tax treatment is crucial in preventing a producer from facing a possible doubling in taxable income due to the unique circumstances under PIK, it does not allow the producer to escape taxation. In fact, it appears that taxable income in 1983 could be higher under PIK than under full planting due to the reduction in actual yields because of the drought. The following one-acre corn example illustrates the situation in 1983 where we assume that producer A decides not to participate as an alternative to idling land, and that the drought decreases his yield, and producer B idles the land and receives PIK entitlement.

GROSS INCOME

	Production or entitlement in bushels	Market price/ bushel	Marketing value	Loan forfeiture value	Total value	Potential expenses	Taxable income
Producer A	82.9	$3.60	$298.44		$298.44	$328	$29.56
Producer B:							
(1) PIK as income at entitlement	89.6	3.60	322.56	238.37	560.93	219	341.93
(2) Deferred liability for PIK until marketed			0-322.56	$238.37	238.37-560.93	219	19.37-341.93

[1] Redemption of price support loan collateral and subsequent sale to the CCC increases income by $2.55 × 89.6 = $228.48 if loan proceeds have not been previously reported. That is, it is assumed that the producer has not declared the loan as income until he redeems it (refer to sec. 77 of IRS Code of 1954 as ammended). The 5 mo. storage payments, if utilized, would add another $9.89 to income.

At the time of PIK entitlement, the producers with outstanding price support loan collateral, who redeem it and sell it to the CCC, realize income with respect to the sale. At the same time, the producers also receive the PIK grain. Without the option to defer tax liability on PIK grain until marketed, producer B would have a bulge in taxable income relative to expenses. By allowing for marketing decisions, the taxable income ranges up to $341.93. The PIK participants have less offsetting expenses for any given income level, and, as a result of the 1983 drought, the quantity of the commodity received as PIK grain may have been greater than the actual production from the acreage idled. This means a larger taxable base than would otherwise be available.

The distribution of the benefits of the PIK program are difficult to assess without more detailed data. Unfortunately, the farm-level data required to fully respond to this question will not be available until sometime in the spring of 1984. Nevertheless, some general observations can be made. First, the effectiveness of the PIK program in reducing acreage was directly related to the participation of producers on the larger farms. Four-fifths of our production comes from less than one-fifth of our farms. Unless these larger producers participate in the acreage diversion programs, there is little hope for significant supply adjustments. Secondly, with participation rates averaging over 80 percent, the number of producers receiving benefits was greater than in any previous programs.

The distribution of commodities rather than cash was a key factor in the success of the PIK program. The payment limitation that applies to direct cash payments severely limits participation by large producers who cannot receive full compensation for compliance with the requirements of production adjustment programs. Thus, a cash land diversion program, in addition to significantly raising current budget outlays, could not have achieved the magnitude of acreage reduction realized with PIK.

Of course, the acreage diversion programs do not occur in a vacuum. They have secondary effects throughout the farm sector and on related programs. To the extent that acreage reduction programs lead to higher prices, they may lead to an overstatement of the benefits of other programs, such as Federal reclamation projects. However, a relatively small percent of U.S. production of major commodities occurs on land irrigated with water from reclamation projects. About 17 percent of the U.S. cotton production occurs on such land, and barley and rice output from this acreage comprises another 10-12 percent of the U.S. total. The Department of Agriculture, in conjunction with the Department of Interior, had recently completed a study on the impacts of acreage diversion programs in relation to reclamation projects. This will be released in the very near future.

Thank you for your attention. I would be pleased to answer your questions.

Chairman STARK. You may proceed to summarize it, to paraphrase it, to expand on it, and you may proceed in any manner in which you are confortable.

Mr. DUNCAN. I have one question. Mr. Ahalt, would you be willing to take the gift that the chairman has for the Secretary?

Chairman STARK. I thought it was the other way around, Mr. Duncan. I thought the Secretary had sent it to me.

Would you like to introduce your colleagues and proceed?

Mr. AHALT. Thank you, Mr. Chairman.

On my immediate left and your right, Mr. Chairman, is Mr. John Noakes who is the acting general counsel of the U.S. Department of Agriculture, and on my immediate right and your left is Mr. James Hinchman who is the associate general counsel for commodity programs and on my far right is Mr. Rollyson from the U.S. Department of Treasury.

What I would like to do, as you suggested, is summarize some key points in my statement, and then we will try to answer your questions.

Chairman STARK. Thank you, proceed.

Mr. AHALT. There is no question that the payment-in-kind program has gathered a great deal of attention in terms of its cost and impact since we implemented it last January. However, from our perspective, Mr. Chairman, the impact in agriculture has been effective. It has improved the overall supply-demand situation in agriculture in 1983.

The situation facing most farmers in the United States today——

Chairman STARK. They are dancing on the streets on Van Ness Avenue in Fresno. [Laughter.]

Mr. AHALT. No, Mr. Chairman. Some farmers due to certain circumstances may be in good shape, but I do not want to give the impression that agriculture is enjoying an unprecedented prosperity. That would be an overstatement.

I would like to just summarize for the committee what we believe to be the major results of the payment-in-kind program. The first point is that there is no question about it being the largest acreage reduction program in history. The reason we implemented it to such a magnitude is that we had the worst supply situation in the history of agriculture.

In the fall of 1982 we had the largest level of commodity stocks in history. As a matter of fact, stocks were also the largest relative to disappearance, and farm incomes were depressed and prospects throughout agriculture were not good.

Against this setting, USDA implemented a program to take a large amount of acreage out of production because it was the only thing we could do. There were no levers to pull, or buttons to push that would solve the world problem, but we did have the tools and flexibility to adjust acreage in order to cut back supplies.

Second, the program has significantly reduced commodity stock levels. As I mentioned, the agricultural situation is in much better shape at this stage than it was a year ago. At the same time supplies are still ample to meet domestic and foreign needs, and our agriculture is able to perform despite the fact we made this big adjustment.

Third, the program has reduced current farm program spending. I know this is a controversial issue, Mr. Chairman, but the fact of the matter is that in fiscal year 1983 for price support and related activity USDA spent about $18.9 billion. For the current fiscal year our estimate at midyear was for about $10 billion. Our current inhouse estimates suggest outlays will be substantially below $10 billion for fiscal year 1984.

The important point is while the value of the commodities that have been dispersed in the PIK program generates a big figure and gathers a lot of attention, the significant thing is, Mr. Chairman, that this program will generate future budget savings. This is because there will be less storage costs to pay, there will be less deficiency payments to make, and less diversion payments.

Therefore, this program generates a net savings. We estimate, and we will defend our estimate, $9 billion in outlay savings over the next 3 fiscal years.

Fourth, the program has significantly improved farm income. Last year net farm income was depressed at $22 billion. For the current year we are estimating it will total around $25 billion.

This improvement has resulted from two aspects of the PIK program. One, the PIK program helped strengthen prices. I have no concern about making that statement to your subcommittee, Mr. Chairman. The program did help strengthen commodity prices. It also reduced outlays and took some of the price-cost squeeze off of farmers.

Chairman STARK. Who pays for those increased prices for commodities?

Mr. AHALT. Customers, both foreign and domestic.

The other thing, Mr. Chairman, that the program did is that it has helped us meet some of our soil conservation needs. With roughly 80 million acres out of production in 1983, there has been less pressure on the Nation's resources.

Chairman STARK. With Mr. Watt around, you need all the help in conservation you can get. I can understand that.

Mr. AHALT. Mr. Chairman, I would like to spend the rest of my remarks focusing on the specific points you raised in the announcement of your hearing. First, with regard to the tax flexibility that we testified before your subcommittee last year and you supported and eventually the Congress passed.

We believe that the tax flexibility has been a plus factor for the program, but also in terms of tax receipts. I have an example in my statement that shows if a farmer did not come into the payment-in-kind program then he very likely would not have had taxable income in 1983. He very likely would have to do a tax write off.

In contrast, by giving flexibility for farmers to defer paying taxes on their entitlement until they sold their commodities, the program has helped generate taxable income.

Chairman STARK. I should hope so. I mean, if you give a farmer—If you give Bangor Punta $3 million I would hope to Nelly they would pay some of that back in taxes. I mean, that is a great trick.

I could do that. I could give $1 billion out to people and they would pay half of it back in taxes, and I could increase the tax payments but I could go broke about 15 minutes doing that one.

Mr. SCHULZE. Is it all right if we all interrupt the witness, Mr. Chairman?

Chairman STARK. If you seek permission to interrupt you may.

Mr. AHALT. On the question of distribution of benefits, Mr. Chairman, as the previous witness has pointed out our total State and country run down of benefits will not be available until next spring. At that time the Department of Agriculture will make that information publicly available.

So, as you know, I cannot say to you today precisely what the benefits have been. We have a question and we have passed it on to the General Accounting Office with regard to their survey because we believe that it is not only not a statistic sample but that it is biased.

They did not sample or try to get a valid cross representation of the payments. The GAO survey was focused on the recipients of large payments. We believe, Mr. Chairman, that by the very nature of the program we had the largest amount of participation that we ever have had. Thus, we have a lot of small as well as large farmers who benefited by the payment-in-kind program.

At the same time there is no denying the facts that four-fifths of this Nation's agricultural output is produced by about one-fifth of the Nation's farmers. They are able to do that because they have become more efficient. However, I do not believe, Mr. Chairman, that that kind of distribution is any different in agriculture than in any other type of enterprise.

In fact, we probably have more small enterprises in agriculture than we do in most other types of businesses. The only other thing I would say in that regard, Mr. Chairman, is the large farmers clearly did not get a proportionately larger amount of PIK payments.

The other question you raised, Mr. Chairman, in your hearing notice dealt again with the distribution effect and the payment limitation. Our structure of the program, Mr. Chairman, with the payment-in-kind incentive was designed to get a large amount of acreage out of production in 1983.

The fact that the payment limitation did not apply allowed us to get the participation we needed to get a sizable cutback in corn, wheat, rice, and cotton production in 1983. Without that kind of program, we could not have gotten the supply adjustment.

A cash diversion program, in addition to costing more in terms of Federal outlays in the fiscal year we have just completed, could not have gotten the producers to participate in the program. They simply would not have participated.

Now, Mr. Chairman, we have been working with the Congress as has been mentioned earlier on trying to freeze target prices because we believe that the mandated minimum target prices in this legislation are encouraging farmers to continue to produce more. Therefore, we have to come back and put into effect acreage reduction programs in order to restrain production.

We believe that if we could get legislation to dampen some of the incentives, then ultimately we will not have to put in the kind of acreage reduction programs that we had to in 1983.

Mr. SCHULZE. What kind of incentives? Could you be more specific?

Mr. AHALT. Well, Congressman Schulze, in the 1981 farm legislation target prices escalate each year. Those target prices, while they may not directly affect the actual market price, are an incentive to farmers to produce.

Mr. SCHULZE. Congressional actions in the past have created the incentive to increase the volume of the commodities and increase storage prices and so forth. Perhaps we should go back a little bit to look at the record of how those in Congress have helped create the problem instead of disrupting how we are trying to solve it.

Mr. AHALT. We have been trying to correct what we perceive to be a serious problem.

Mr. DORGAN. If the gentleman would yield.

MR. SCHULZE. Yes, I yield.

Mr. DORGAN. I think there is a substantial amount of disagreement on that point. I know that a subcommittee chaired by Mr. English has developed conclusions of mismanagement by USDA that has led to the problems that necessitated PIK in the first instance.

I sat on the Agriculture Committee and I know we sat across the table a good many times talking about whether this will work or that will work. In the 1981 or 1982 period the administration offered a 15-percent set aside program with no incentive to participate and we simply said that will not work. It just will not work, and it did not work.

It should have been no surprise to anyone that it did not work. The result was the biggest surplus we have ever seen in this country's history in farm commodities and then the crying need for something dramatic like the PIK program.

So to lay it on the backs of Members of Congress who voted for a target price so far below the cost of production anyway is, I think, overlooking some demonstrable mistakes that the USDA made in 1981 and 1982.

Mr. SCHULZE. You are saying the farm program has been entirely run by the USDA without any interference from Congress?

Mr. DORGAN. I said the Congress accepted the 15 percent set aside program USDA put in place in 1981 and 1982.

Mr. SCHULZE. So, therefore, we are again going to duck the responsibility and say Congress had nothing to do with it. We will blame it on USDA, on faceless bureaucrats instead of those on the Farm Committee, the Agricultural Committee who are probably primarily responsible for it.

Mr. DORGAN. That is a straw man. I did not say that. But for someone to say it is Congress fault is to overlook the fact that in 1981 Congress bought Secretary Block's program.

In 1982 he announced the set-aside program and Congress bought it, and in 1983 the result was bulging grain bins of enormous quantity that required this kind of program. That is all I am saying. We share joint responsibility.

Chairman STARK. I would make an observation. As one can see by the kind of cotton I see growing the agricultural policy of this country is beyond the scope of this subcommittee. The tax postponement is very much before us, and in all tax matters that the committee considers there is a question of the progessivity and fairness so I think it is very germane that we look at the size of payments people received and whether indeed a tax incentive is necessary.

I just want to keep us kind of focusing on that. There is a very serious question of the legality of the payments made in excess of $50,000, and I think that is an issue the committee should be vitally concerned with because in effect I see no reason we want to give tax consideration to people who are getting illegal payments.

I would love to hear the debate on the agricultural policies of our Government, past and present, but as I say I think we have to in fairness focus a little more closely to our own area of jurisdiction because you will lose the chairman otherwise. I appreciate your indulgence.

Mr. DUNCAN. Mr. Chairman. Go ahead.

Chairman STARK. I wanted to see if Mr. Ahalt wants to continue. I believe he has some more statement.

Mr. AHALT. I have one more point, Mr. Chairman. That is in response to the last point you raised in your notice of hearing with regard to acreage reduction programs and their relationship to reclamation projects. I would like to report to you and the subcommittee that we are in the final stages of completing a report which we have worked on with the Department of the Interior which focuses on this very issue. As soon as that report is available we will make it available to the subcommittee, Mr. Chairman.

Chairman STARK. I appreciate that.

Mr. Ahalt, I have one question that comes up often in California and in the Fresno area, for example, where we have illustrated these multimillion dollar payments to very rich farmers who have been making multimillions—they never participated before you took the $50,000 limit off as a matter of fact. But the people who were and I wonder if the Department of Agriculture ever considered this are first of our migrant workers, legal citizens lost work this year. Our suppliers, the small business people in these communities who did not get to sell any products, fertilizer or their labor, was that considered when the PIK program was designed?

Mr. AHALT. Yes, it was, Mr. Chairman. It was considered when it was designed. We have done an ongoing analysis of the impact on the agricultural——

Chairman STARK. That had no linkage to cutting people off the food stamp rolls?

Mr. AHALT. Well, these programs are not related. We looked at that very carefully. I would just say to you, Mr. Chairman, that these input industries were not doing well prior to the PIK program.

Farm machinery sales peaked about 3 years ago. Fertilizer sales peaked in 1982. Those industries cannot do well, Mr. Chairman, if agriculture is not prospering.

Mr. SCHULZE. Mr. Ahalt, how about the environmental considerations? I know they are near and dear to our chairman's heart, and the fact that less fertilizer had to be used resulted in less abuse to the environment. Was that a net benefit of this program?

Mr. AHALT. We believe it was. We have taken a lot of pressure off the land and water resources. In 1983 we also believe that we may learn some additional things about conservation so we think in that respect it has been a positive——

Mr. SCHULZE. I know that the Friends of the Earth and the friends of Stark will appreciate that.

Chairman STARK. I thank the gentleman for his observation.

Mr. Ahalt, another question. Was the PIK program not really designed as a way to get around the $50,000 limitation on diversion payments?

Mr. AHALT. The payment-in-kind program was designed because we believe, Mr. Chairman, as I pointed out, that it was a way in which we could get a substantial amount of acreage out of production and we could do it without taking on large current outlays. We designed it after the Congress failed to enact our proposed legislation.

As Congressman Dorgan pointed out the House of Representatives did enact a bill. The Senate did not. We felt we had no choice but to go ahead.

We came back. We redesigned the program, made it what we call a strict payment-in-kind program and proceeded in that manner.

Chairman STARK. But did you not testify in March in Mr. English's committee that in effect—I have the testimony. I would be glad to submit it for the record if you rather—but in effect your program would not work unless you could get around the $50,000 cash payment.

Mr. AHALT. I testified to that right here today, Mr. Chairman, that if we had to run a paid diversion program we could not get——

Chairman STARK. You could not get the participation if any program had the $50,000 limit. Is that not a fact?

Mr. AHALT. That is correct.

Chairman STARK. If that is the case is that not an admission that for whatever reason, inflation, the farm economy that you cannot run a farm supply control program with a $50,000 limit whether it is cash equivalence in the form of a fungible commodity or money. Is that not a fact? Is that not what you just said?

Mr. AHALT. Well, it depends upon what the individual annual commodity supply-demand balances are.

Chairman STARK. Under current conditions you could not have for the past couple of years.

Mr. AHALT. For 1983 that was our conclusion.

Chairman STARK. What do you propose to do next?

Mr. AHALT. We cannot continue to run a payment-in-kind program, Mr. Chairman. The fact that the drought in 1983 seriously damaged the production of the spring-planted crops in a number of areas of the country has changed the supply situation substantially for most of the crops with the exception of wheat.

We have announced a payment-in-kind program for wheat for 1984, but for feed grains and cotton we have announced a much more modest program without a PIK component. As a matter of fact, the wheat program in 1984 is much more modest than the 1983 program.

Chairman STARK. Thank you.

I want to pursue the issue of when the General Counsel's office first reviewed the issue of whether the $50,000 payment limitation was applicable to PIK, and I would ask Mr. Hinchman if he could give the committee some idea of the internal debate that may have transpired in the General Counsel's office over this issue.

Mr. HINCHMAN. As the Chairman is aware, in connection with the presentation of our legislative proposals for the PIK program last winter we indicated to the Congress we thought there were three areas where the Department's authority to carry out a PIK program of the kind we had in mind was unclear.

The application of the payment limitation to payments-in-kind was one of those three issues. It had been identified by us as an area of at least some controversy in our analysis of legislative authorities as the program was being designed.

Over the months, both before Congress and in the Department, as development of the program continued and the course of the legislation progressed, the discussions continued. As Mr. Ahalt has indicated, ultimately the legislation was not enacted.

A decision was made by the Department nevertheless to proceed with the PIK program. As part of the discussions we reviewed again those same issues.

We recognized again, as we had said from the very beginning, that there was uncertainty on the question of the applicability of the payment limitation to payments-in-kind, but the Department ultimately concluded it had the authority to proceed.

Chairman STARK. Did the Department at any time seek to get clarification even on an informal basis from the relevant congressional committees on that issue?

Mr. HINCHMAN. I am not personally aware of any conversations on an informal basis on that question. So far as I know there were no formal requests.

Chairman STARK. Did you at any point or did the Department at any point consult with the Justice Department on your conclusion that the $50,000 payment limitation was inapplicable to PIK.

Mr. HINCHMAN. We did not consult with the Justice Department formally on that question, no. We did have a discussion with the

Justice Department in connection with the promulgation of regulations under which we carried out the payment-in-kind program.

Those regulations include statements with respect to the applicability of the payment limitation I believe. I do not recall, in any conversations in which I participated, any specific discussion of that question.

Chairman **STARK**. Will you submit to the subcommittee copies of any opinions provided to the Secretary relevant to the $50,000 limitation and how it would apply to the PIK program?

Mr. **HINCHMAN**. Of course, I will do that. I feel I should say to you that to the best of my knowledge there are none, but I will review our records.

Chairman **STARK**. Thank you. So you have no written opinions on the legality of the $50,000 payment limitation?

Mr. **HINCHMAN**. That is correct.

Chairman **STARK**. So the only written opinion existing today is that from the General Accounting Office saying it is illegal.

Mr. **HINCHMAN**. It is my understanding that Senator Melcher has corresponded with the Justice Department on that question, but I am not a party to that correspondence. We do not have a written——

Chairman **STARK**. As a result of a question being raised by Congressman English in the Agriculture Committee and a question raised by this subcommittee generally back earlier this year and now as a result of the letter of November 1 I assume there is no when I say legal opinion, a formal kind of scholarly document that lawyers are prone to prepare at over $100 an hour. But I would suspect, am I not correct, that there may be one aborning in the Agriculture Department at this very moment.

[Pause.]

Mr. **HINCHMAN**. There are several questions there. In response to the first, I myself am not compensated at over $100 an hour. But you are correct, Mr. Chairman; I did not mean to be flip.

We do not have a formal legal opinion. At the same time I do not mean to suggest we are indifferent to this question and do not take it seriously. We do.

If we did not take it seriously we would not have pressed for legislation.

Chairman **STARK**. Could I ask—I state for the record what is obvious. I am not an attorney, but if whatever higher order determines that the opinion and the memorandum from Mr. Van Cleve of the GAO were to survive the test of whatever legal review and in fact it was determined that was the law that payments of over $50,000 are illegal, Mr. Ahalt, what would the Department do?

Mr. **AHALT**. Well, Mr. Chairman, we would immediately consult Mr. Noakes and Mr. Hinchman, but we are not going to act outside the law.

Chairman **STARK**. OK. Then I guess I would ask Mr. Noakes and Mr. Hinchman if in fact the GAO opinion survives or stands what is the next step?

Mr. **HINCHMAN**. The appropriate remedy is we believe another set of questions. It raises some issues that are not presented by the question of whether the payments were proper.

For example, presumably if we were to decide that the $50,000 payment limitation did apply we would follow that view with respect to any future PIK contracts including specifically the 1984 wheat program. The problem of what to do about the existing payment-in-kind contracts is far more complicated.

It is one thing to tell a cotton producer, for example, in advance of his enrollment in the program that there is a $50,000 payment limitation and you have designed the program in a way which permits him to conform his enrollment to that limitation. It is another thing after he has taken all of that land out of production and has lost the opportunity to produce income from production to tell him that you nevertheless will not provide him the payment that you promised him in the contract.

I think we need to look at the question of whether we have legal authority to do that and whether it would be sound policy if we did.

Chairman STARK. To the best of your recollection or anyone else's recollection did any large producers of wheat or cotton or any products under the PIK program ever discuss with the Department of Agriculture whether or not payments in excess of $50,000 were illegal?

Mr. HINCHMAN. I did not personally participate in such discussions.

Chairman STARK. Do you know of such discussions?

Mr. HINCHMAN. No, sir.

Chairman STARK. Mr. Ahalt.

Mr. AHALT. There were certainly questions raised by producers, Mr. Chairman, and we indicated to them that our opinion was that it did not apply.

Chairman STARK. But you had no legal opinion on which to base that opinion.

Mr. AHALT. Well, we have no written opinion unless Mr. Hinchman signs one.

Chairman STARK. So do you know if any of the farmers I mentioned earlier, the big eight down in California, discussed the legality of overpayments with the Department?

Mr. AHALT. I know of none of those, Mr. Chairman.

Chairman STARK. But if they did and if in fact you told them that you felt it was legal that might have been putting them in some jeopardy, would it not?

Mr. AHALT. Well, I cannot speak to the jeopardy issue. I can say we indicated publicly that payment limitation would not apply.

Chairman STARK. You knew at the time there was some difference of opinion in Congress as to that particularly with Mr. English's subcommittee of the Agriculture Committee.

Mr. AHALT. I am not sure of the timing of those hearings. We announced this program in January 1983.

Chairman STARK. When was the first person to sign up, the first cotton farmer?

Mr. AHALT. Well, it would have been——

Chairman STARK. That will be a matter of record.

Mr. AHALT. Yes.

[Department of Agriculture response:]

The first cotton farmer signed up on January 24, 1983.

Chairman STARK. Mr. Duncan.

Mr. DUNCAN. Mr. Ahalt, do you expect the administration to continue the full PIK program in 1984?

Mr. AHALT. No; I do not, Congressman Duncan. We have already announced that there will not be a payment-in-kind program for feed grains or for cotton, but there is a program of lesser scope that will be available voluntarily for wheat producers.

Mr. DUNCAN. What is the cost of storage or what has been the cost of storage for commodities during the past fiscal years?

Mr. AHALT. The storage costs vary. I believe it costs something in the neighborhood of 30 cents a bushel to store a bushel of grain.

Mr. DUNCAN. Has the amount of PIK payments been in line with the Department of Agriculture's projections?

Mr. AHALT. Congressman Duncan, the sign up was greater than we originally anticipated. The actual volume of entitlements that we are still, by the way, making available to farmers are pretty much on target. We did not attach a value to those commodities that are being dispersed. I think it is important to point out.

Mr. DUNCAN. Is the Department working on changes to improve the program?

Mr. AHALT. We are always trying to put together as cost-effective a program as we can.

Mr. DUNCAN. May I say I think the committee by implication approved payments above $50,000 because the question was raised about $50,000 payment and in fact it is a credit to a fine chairman. He was opposed to anything above that. We did discuss it in committee and by implication approved it. I would like the record to show that every single member on this subcommittee voted for the PIK program.

I will correct a statement that the GAO is always correct. They have been known to be wrong occasionally.

Thank you.

Chairman STARK. Thank you, Mr. Duncan.

There is a key vote on the domestic content bill which I think members would like to be reported on. I would ask the indulgence for about 10 minutes for the gentlemen from the Department and Treasury, and if we can make the vote and get back in about 6 minutes we will recovene at that time.

[Recess.]

Chairman STARK. It is my intention to recognize Mr. Dorgan in a minute, but I think there are two procedural questions and an announcement.

The Subcommittee on Select Revenue Measures is going to go into a second hearing that we will call at 12:45. Secretary of the Treasury Regan has asked to appear before our subcommittee for 15 minutes, and we will accommodate him out of order at that point.

Second, the Treasury is here, and I think without a prepared statement and only to answer questions. The Chair has but 2½ questions.

The Treasury was to give us in September a study on the PIK program, and they were today to have delivered and I assume you have brought that with you, Mr. Rollyson, a study on Carribbean tax havens But aside from that whatever noncombat zones are available for tax havens I was wondering if you could tell us how you are coming on the PIK study due in December and on my particular Carribbean tax haven study, how that is progressing.

Mr. **Rollyson**. I am sorry to inform you that I have less than 2½ answers. I was not informed of your request for a Carribbean tax haven study, but I will deliver that to you as promptly as possible.

Chairman **Stark**. Mr. Rollyson, would it be your opinion after reviewing the congressional legislative history and the minutes of the hearing that was held on this particular tax provision relative to PIK payments that the tax postponement of payments-in-kind cannot be extended for 1 more year without action by the Congress?

Mr. **Rollyson**. I Think that is correct, Mr. Chairman.

Chairman **Stark**. Thank you.

Mr. **Rollyson**. I think there is a question as to what is meant by the 1983 crop year. That phrase is not clearly defined under the statute, and it would assist if we had some legislative clarification.

Chairman **Stark**. I think it is quite clear we did not intend it to be wheat which is going to be planted late in calendar year 1983. That is not included and that is why the short string and the purpose of the hearing is to determine whether we would extend it, and I think we can find sufficient legislative history for you to show we did not intend to include the wheat which would be planted late in the calendar year 1983 and harvested in 1984.

Mr. **Rollyson**. If the chairman would have no objection, we would provide you with what we think the basis would be for making such a determination plus the administrative difficulties presented by the interpretation you suggest.

Chairman **Stark**. I would appreciate that very much, and unless any of the other members have questions for Mr. Rollyson I think we could excuse him at this point.

Thank you for your patience.

Now I recognize Mr. Dorgan who will inquire.

Mr. **Dorgan**. Thank you, Mr. Chairman. I have just a couple of areas I wanted to clear up.

Mr. Ahalt, your job is tough enough without my adding to your burdens, but you and I have been through this before on the Agriculture Committee so it seems like old times.

You indicated that had you said agriculture was enjoying prosperity that would be an overstatement. In fact, it would probably be terribly inaccurate, would it not, rather than just an overstatement? There is no such thing given the aggregate income levels that agriculture sector owned in 1979 versus today.

There is no form of prosperity there is there?

Mr. **Ahalt**. No; I was simply trying to make the point that the situation was a bit better in 1983 than in 1982.

Mr. **Dorgan**. The question of soil conservation came up with regard to PIK. The double summer fallow requirement imposed, at least in my part of the country, on some of the wheat included in PIK was determined, at least in my conversation, by most soil conservationists to be counterproductive to good soil practices.

Is that double summer fallow imposed in the wheat country in your judgment counterproductive for conservation?

Mr. **Ahalt**. Although I have learned a lot in the last few years from the Agriculture Committee, I am not an expert on summer fallow. Our problem on the summer fallow issue is that we are constantly being prodded by the Congress to run an efficient and effective program, but then we are also under pressure to provide flexibility for wheat producers in summer fallow areas. Thus it has been a tough problem for us.

I cannot speak to the question of whether or not it has been counterproductive from a conservation standpoint.

Mr. **Dorgan**. I want to make the point because most soil conservationists in my part of the country acknowledge that the double summer fallow requirement is not in accordance with good soil conservation standards, but I just wanted to cover the record on that.

A question that is a little bit awkward and cumbersome, but I think needs to be asked, concerns today's newspaper story describing an agricultural official whose farm stands to gain more than $1 million from free Government PIK cotton. He apparently has a minority interest in that farm, and this has been in the newspapers previously.

That kind of publicity is not good for the Department or for the program, I expect. Are there other people involved in the administration of PIK in the USDA who are benefiting from the PIK program?

Mr. **Ahalt**. Congressman Dorgan, I am glad you brought that up. I would like to ask Mr. Hinchman to respond to that because I think it will help clear up that issue.

Mr. **Hinchman**. With your permission I would like to make two points. First, with your respect to the specific individual referred to in the Washington Post this morning, that official has entered into an agreement with his partners under which he will surrender to them all interest accruing from their participation in the PIK program.

Chairman **Stark**. Excuse me, just a moment. The participation will go to him but he will then turn it over to his partners, not return it to the Government?

Mr. **Hinchman**. That is correct.

Chairman **Stark**. That is as much as if to say I got an illegal payment and I could give it to my ex-wife rather than give it back to the Government. Is that normal when the Government is paying Government officials something it should not that they can turn around and give it to a charity or their friends and relatives?

Mr. **Hinchman**. I am not sure in what sense you use the word "illegal."

Chairman **Stark**. Immoral or unethical. Something is wrong with it or he would not give it away.

Mr. **Dorgan**. The chairman is improper I think. There is nothing illegal about it. It is clearly legal.

Chairman **Stark**. But does that cure it by taking the money? The Internal Revenue I am sure will determine that that is income in the hands of Mr. Rank because he gives it away and it sure as hell will be a gift to his partners.

I do not see any way that getting the money and giving it away to your partners does anything more than make your partners awfully happy.

Mr. **Hinchman**. I am not an expert in Internal Revenue laws and I do not know how the Internal Revenue Service will tax that income. I will say, from the perspective of the Department and its ethical standards, I think Mr. Dorgan is right. It is an ethical standards issue, not a matter of illegality. It is an ethical standards issue.

We would consider it appropriate for an official in the position of Mr. Rank, who is the official we are talking about, to surrender all interest accruing to a farm during the period in which he is serving in the Department that arises from participation in our programs. We do not require that the money that otherwise would have accured to the farm be given back to the Government.

Mr. **Dorgan**. Is that surrendering the interest retroactively?

Mr. **Hinchman**. With your permission I would like to place in the record at this point, Mr. Chairman, the documents under which Mr. Rank sets out——

Chairman **Stark**. Without objection we will make that a part of the record.

[The documents referred to follow:]

U.S. Department of Agriculture,
Agricultural Stabilization and Conservation Service,
Washington, D.C., September 22, 1983.

Mr. Harold Weeth,
Chairman, Board of Directors, Cinco Farms, Inc.,
Hanford, Calif.

Dear Harold: As you know, when I became national Administrator of ASCS, in order to avoid any apparent conflicts of interest, I pledged among other things to resign as a Director of Cinco Farms, Inc.; to abstain from management of all farming operations in which I hold any interest, including Cinco Farms, and also to not participate in any matter regarding farming operations in Fresno and Ventura Counties, where all my farming interests are located. I have faithfully adhered to all the pledges I made at that time.

Recently, however, questions were raised as to whether I might have violated the spirit or the letter of those commitments as a result of the decision by Cinco Farms to enroll a portion of its cotton acres in the 1983 payment-in-kind (PIK) program. Even though I knew nothing about the decision by the Cinco Board of Directors to participate in PIK, and certainly did not participate in the determination to enroll Cinco's cotton base in the program, unfounded accusations were made and press stories were written incorrectly inferring that I would financially benefit in a substantial amount from the PIK program because of this decision.

While these accusations have now been proven untrue, and I never in any way violated my original pledges not to involve my personal financial and farming interests with program decisions which I must make as Administrator, I believe certain additional steps are necessary on my part in order to avoid any public perception that a conflict of interest exists between my duties in this Department and my personal interests. In making the requests outlined below, I recognize that they will impose some financial loss on the corporation, will require a complex legal arrangement, and will prevent Cinco Farms from participating in farm programs in which the corporation otherwise would be qualified to take part. However, I believe these actions are both necessary and appropriate to protect the integrity of the Department as well as Cinco Farms.

(1) To assure that I have not received and will not receive any payment, profit, or benefit as a result of Cinco Farms' participation in any farm price support programs since my appointment to my present positions, I request that special accounts be established for the corporation into which will be deposited the proceeds of all price support program payments received by Cinco Farms, including the PIK program for cotton, since I became ASCS Administrator. The assets of and proceeds from these accounts will be identified as being for the benefit of all other Cinco Farms stock-

holders, but I will receive no payment or benefit therefrom—either during or after the completion of my service in this Department.

(2) To completely eliminate any implication that any farming corporation in which I own a minority interest is benefiting from a price support program over which I have control, I ask that Cinco Farms not participate in any USDA lending or farm price support program during my tenure in this Department. I hope the officers and directors of Cinco Farms can see their way clear to approve this request and abide by its terms.

Since I am no longer an officer or director of the corporation, naturally I would respect your decision not to comply with these requests since they seriously impose on your freedom of operation, and deprive the corporation of income which it could otherwise receive. However, as I have stated above, I believe these steps are both appropriate and necessary to protect us from embarrassment from Cinco Farms' continued participation in farm programs, even though I have faithfully followed the pledges I made when I took office and have not received any payment or benefits resulting from farm program participation while serving as Administrator.

Your early favorable response to these requests would be gratefully appreciated.

Sincerely,

EVERETT RANK, *Administrator.*

U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE,
Washington, D.C., September 22, 1983.

Hon. DAVID H. MARTIN,
Director, Office of Government Ethics,
Washington, D.C.

DEAR MR. MARTIN: When I was appointed in 1981 as Administrator of the Agricultural Stabilization and Conservation Service (ASCS), and as a Member of the Board of Directors of the Commodity Credit Corporation, I made full disclosure of my financial interests and agreed to take a number of steps in order to avoid any actual or apparent conflict of interest between the duties I would perform in those positions and my personal financial interests. A copy of my letter of September 22, 1981, to your predecessor, the Honorable J. Jackson Walter, in which I outlined my financial interests and the steps I agreed to take in connection with my apointments to the two positions, is enclosed.

As indicated in my letter to Mr. Walter, I pledged at that time, among other steps I also agreed to take, (1) to resign as a Director of Cinco Farms, Inc., a California farming corporation in which I hold a 17½% interest; (2) to abstain from management of all farming operations in which I hold any interest, including Cinco Farms; and (3) to recuse myself from participation in any matter which may arise within the Department during my tenure regarding farming operations of any kind in Fresno and Ventura Counties, the two counties in which all of my farming interests—including Cinco Farms—are located. I believe that I have faithfully adhered to all of the pledges which I made at that time.

Questions have now arisen as a result of the decision by Cinco Farms, Inc., to enroll a portion of tis cotton acreage in the 1983 payment-in-kind (PIK) program, a program administered by ASCS under which producers may elect to commit their acreage bases for certain commodities to specified conserving uses and, in return for not planting the covered commodity, will receive payment in kind from this Department's stocks of that commodity. As a result of Cinco's decision to enroll a portion of its cotton base in the 1983 PIK program, Cinco will receive payment in cotton based upon records regarding pounds per acre produced in previous years on the acreage set aside. In keeping with my agreement, I did not participate in Cinco's decision to enroll any part of its cotton base in the PIK program, nor did I know that Cinco's management intended to do so.

Because this matter has arisen, due in large measure to this Department's determination to address agricultural surpluses and depressed prices by establishment of the PIK program—a program which did not exist and could not have been envisioned at the time of my appointment—I believe certain additional steps are necessary on my part in order to avoid any public perception that a conflict of interest exists between my duties in this Department and my personal financial interests. In the first place, since Cinco Farms has elected to participate in the 1983 PIK program for cotton, and since I continue to have an interest in Cinco, I have advised my superiors that I will take no further part in policy discussions or administration of the 1983 PIK program for cotton, or in the discussion or implementation of any other USDA price support for cotton for the 1983 crop year. I hereby pledge to abstain from involvement in these programs for the remainder of the 1983 crop year.

Steps have also been taken by me to provide further assurances that I have not received and will not receive any payment, profit, or benefit as a result of the participation by Cinco Farms in any USDA farm price support program since my appointment to my present positions. I have written the officers and directors of Cinco Farms requesting that special accounts be established for the corporation to which will be deposited the proceeds of any and all participation in USDA price support programs since the time of my appointments in 1981, including the proceeds of payments-in-kind to be received by the corporation as a result of its enrollment in the 1983 PIK program for cotton. The assets and proceeds from those accounts will be identified as being for the benefit of all other stockholders of Cinco Farms, but I will receive no payment or benefit therefrom—either during or after the completion of my service in this Department. I anticipate an early response from the officers and directors of Cinco Farms agreeing to the establishment of such special accounts for this purpose.

Further, I believe it is necessary to address my continued interest in Cinco Farms. In my view, it is inappropriate for a farming corporation in which I own an interest, albeit a minority interest, to continue to participate in USDA price support programs while I serve as Administrator of the agency of this Department which administers such programs. Consequently, I hereby pledge that no farming operations in which I hold an ownership interest, including Cinco Farms, will participate in any USDA lending on farm price support programs during my tensure with the Department of Agriculture. This request was included in my recent letter to the officers and directors of Cinco Farms mentioned above, and I anticipate an early response from them agreeing to this pledge and stating their willingness to abide by its terms.

While I had no knowledge of the decision by Cinco Farms directors to participate in the PIK program until after the fact, and did not participate in it, I recognize their action caused some embarrassment to your Office, this Department, and this Administration. I deeply regret this. At the same time, I believe that I have fully and faithfully adhered to the pledges which I made when taking office, and I believe the additional steps outlined in this letter will provide further assurance that no actual or apparent conflict of interest will arise as a result of my continued performance of the duties of the offices I hold.

Sincerely,

Enclosure.

EVERETT RANK, *Administrator.*

WASHINGTON, D.C., *September 22, 1981.*

Hon. J. JACKSON WALTER,
Director, Office of Government Ethics,
Washington, D.C.

DEAR MR. WALTER: I have submitted my SF-278, Financial Disclosure Report, making full disclosure of my financial interests as required in connection with my appointment as Administrator of the Agricultural Stabilization and Conservation Service (ASCS), Department of Agriculture, and my nomination to be a Member of the Board of Directors of the Commodity Credit Corporation (CCC). That form has been approved by Mr. John W. Fossum, this Department's designated agency official under the Ethics in Government Act of 1978, and a copy has been forwarded to you with Mr. Fossum's letter of this date.

The purpose of this letter is to outline the steps which I intend to take to assure that no actual or apparent conflict of interest exists between my personal financial interests and the duties of my positions as Administrator of ASCS and Member of the Board of Directors of the CCC.

My wife and I own interests in several farming enterprises. Our Home Ranch, located in Fresno, California, is comprised of 118 Acres, and is used for production of almonds. This land is farmed by our son-in-law on the basis of an oral crop-share arrangement.

Cinco Farms is a corporation in which we own a 17½ percent interest, and is located in Huron, California. Cinco has 360 Arces devoted to oranges and lemons, and 40 Acres on which row crops are grown. In addition, my wife and I lease 260 Arces to Cinco, on which cannery tomatoes, wheat, cotton, and barley are grown, on the basis of a written, five-year cash-rent lease. I have also served since 1974 as a Director of Cinco Farms, but have resigned effective as of June 1981.

Newport Beach Development Corporation is another California corporation engaged in agricultural activities, in which my wife and I own a 16⅔ percent interest.

Newport Beach farms approximately 4,000 Acres, on which citrus and avocadoes are grown. I currently serve as a Director and as Secretary of the corporation, and I have determined that I will resign from both those positions immediately upon my confirmation by the Senate as a Member of the Board of Director of the CCC.

I also serve as co-trustee, with my mother, of the Everett G. Rank Trust, a testimentary trust established by my late father. Under the terms of the trust, my mother receives all income from the trust for the remainder of her lifetime. My two sisters, my brother, and I are contingent beneficiaries under the terms of the trust. The trust owns agricultural lands, most of which are leased on a crop-share basis and are used as vineyards. Approximately 100 Acres are used for production, of wheat. An additional 17½ Acres are leased to a third party on a cash rent basis and are used for growing boysenberries.

Of all of the above-described farming operations in which my wife and I own any interest, including the trust agreement under which I am a contingent beneficiary, the only crops which may be considered to be price-supported in any fashion by the programs of the Department of Agriculture. ASCS, or the CCC, are the cotton and wheat produced by Cinco Farms and the 100 Acres of wheat grown on part of the lands administered by the trust. Nothwithstanding the de minimis nature of these interests, I have decided that I will pledge to recuse myself from involvement in any particular matters which may arise within the Department of Agriculture, including the operations of the CCC, regarding farming operations in Fresno and Ventura Counties, the two counties in which all of the above-described farming operations are conducted. I also pledge to avoid active involvement in management of the farming operations of the Home Ranch, Cinco Farms, Newport Beach Development Corporation, and the lands administered by the Everett G. Rank Trust.

I believe that these steps will assure that no conflict of interest, either actual or apparent, will exist between my personal financial interests and the duties which I will perform as Administrator of ASCS and as a Member of the Board of Directors of the Commodity Credit Corporation.

Sincerely,

EVERETT G. RANK.

CINCO FARMS, INC.,
Huron, Calif., October 21, 1983.

Mr. EVERETT G. RANK, Jr.,
Agricultural Stabilization and Conservation,
Washington, D.C.

DEAR EVERETT: On behalf of the Board of Directors of Cinco Farms, Inc., I want to respond to the requests contained in your letter of September 22, 1983. This relates to future participation in USDA lending and farm price support programs, and the handling of any payments of benefits received in the past as the result of Cinco Farms' participation in any lending and farm price support programs.

(1) As I indicated to you in my letter of October 3, 1983, we have no problem in responding positively to your request that Cinco Farms (because of your continuing minority interest in the corporation) not participate in any USDA commodity loan or farm price support program for as long as you continue to serve in the Department. Frankly, the corporation's financial position would have been enhanced had we stayed out of the program. However, we felt obligated at the time we enrolled in the cotton portion of PIK to comply with the Secretary's request to reduce acreage in 1983. You may therefore consider this letter as an expression of our intent to direct our attorney forthwith to develop a contract with you in which we will make every effort within the law to abstain from participating in any lending or price support program for the remainder of your tenure in USDA. This responds to item (2) in your letter.

(2) The Board of Directors at its meeting today voted to authorize our attorneys and accountants to research the legal and accounting aspects of establishing the special accounts called for in item (1) of your letter. These accounts would be used for the deposit of all proceeds from any price support program payments received by Cinco Farms, including the PIK program for cotton since you assumed your current position as ASCS Administrator. The documents establishing these accounts would specify that funds from them will be for the benefit of all other Cinco Farms stockholders, but not for your benefit either before or after completion of your service. As your letter indicated, this arrangement would be extremely complex and would take some time to accomplish. We will advise you by letter as expediently as possible regarding the progress of this study by our attorneys and accountants.

We believe these two actions appropriately respond to your requests.

Sincerely,

HAROLD C. WEETH, *President.*

Mr. DORGAN. Might I pursue that line of questioning?

Chairman STARK. Please.

Mr. HINCHMAN. In essence the agreement is that Mr. Rank will not share in the proceeds of the PIK program from this farm in 1983 and that the farm will not participate in USDA programs in the future.

Mr. DORGAN. The question I want to ask is are there other USDA officials or PIK officials who participated in the program for PIK that we should know about, and are similar arrangements being developed for those?

Mr. HINCHMAN. No Presidential appointee in the Department of Agriculture who is responsible for making agricultural price support and production stabilization policy is participating in the PIK program, no official in policy.

Mr. DORGAN. Who is responsible for what?

Mr. HINCHMAN. Agricultural price support and production stabilization policy.

Mr. DORGAN. Do your have that answer written down?

Mr. HINCHMAN. We can provide it for you, sir, yes.

Mr. DORGAN. The reason I am asking you is your answer was so precise, and were you expecting my question and why were you expecting it?

Mr. HINCHMAN. The chairman informlly raised with the Department in advance of this hearing the extent to which Department officials participated in the program. I am able to respond only in part to that question at this hearing because we received the question only a short time ago, and there are a lot of us.

Chariman STARK. Now——

Mr. DORGAN. If I might continue.

Chairman STARK. Please continue.

Mr. DORGAN. I appreciate the chairman's indulgence, but the line of questioning the chairman pursued was lengthy and quite constructive and I do have a couple of questions I would like to pursue.

You told me who is not receiving it. Can you tell me who is receiving the benefits of the PIK program of the USDA who serves in an official capacity at the USDA?

Mr. HINCHMAN. I cannot do that today except to say——

Mr. DORGAN. Do you know the answer to that?

Mr. HINCHMAN. By name I do not, sir. Let me see if I can say a little more than I said in the first part of my answer.

Mr. DORGAN. All right.

Mr. HINCHMAN. No senior policy official at the Argiculture Stabilization Conservation Service is participating in the PIK program. Just so that the record is entirely clear, because these are the names we have been able to research since the question was asked, I think it would be appropriate for us to submit for the record precisely the names of the officials we mean to include in that list so there will not be any questions should later information reveal others who are participating.

We assume that there are officers of the Department who are participating in the PIK program. We assume, for example that substantial numbers of State and county committee members are also farmers in the program.

We do not know who they are and it will take us a long time to find out.

[The information follows:]

None of the following officials of the Department, all of whom are responsible for making agricultural price support and production stabilization policy, are participating in the 1983 payment-in-kind program:

John R. Block, Secretary of Agriculture; Richard E. Lyng, Deputy Secretary of Agriculture; Daniel G. Amstutz, Under Secretary of Agriculture for International Affairs and Commodity Programs; William G. Lesher, Assistant Secretary for Economics; Everett G. Rank, Administrator, Agricultural Stabilization and Conservation Service; C. Hoke Leggett, Associate Administrator, Agricultural Stabilization and Conservation Service; Roy T. Cozart, Acting Deputy Administrator for State and County Operations, Agricultural Stabilization and Conservation Service; Merrill D. Marxman, Deputy Administrator for Commodity Operations, Agricultural Stabilization and Conservation Service; Roger K. Bottrell, Acting Deputy Administrator for Management, Agricultural Stabilization and Conservation Service; and Ray F. Voelkel, Acting Deputy Administrator for Program Planning and Policy Development, Agricultural Stabilization and Conservation Service.

Mr. DORGAN. If you have officers of the U.S. Department of Agriculture participating in the program, will that pose an ethical dilemma similar to that which has been posed by the participation by Mr. Rank, or are you saying, with the very concise answer you have given me, that because they are not Presidential appointees or have a responsibility for developing policy in this area or that area that you believe participation in the PIK program by USDA officials is appropriate?

Mr. HINCHMAN. It seems to me it is difficult to give a precise answer as to where the line is. The closer an officer is to development of policy the greater the opportunity for him to influence decisions which will insure to his own benefit.

It seems to me difficult, for example, to object to participation in the PIK program by a forest ranger who happens to share with his brother a corn farm back in Indiana, and, of course, there are officials in between. I responded to your original question on the basis of a selected list of names because those are the officials with whom we are most concerned in addressing these ethical questions.

I am not prepared to say that it is wrong for a State committeeman to have a farm in the PIK program, nor do I think that is the policy of the Department.

Mr. DORGAN. You are a very good lawyer. Could you get us the names of the officials in the U.S. Department of Agriculture? I am not concerned necessarily about county committee people. I am interested in officials in the U.S. Department of Agriculture who are participating in the program, in the PIK program, officials principally at the USDA Washington office.

Those are where decisions are made. That is where policy is developed, and I would be interested in a list of names. I would also be interested in what you are doing internally to determine where that line should be drawn.

It seems to me your answer indicates to me that you have some concern about it as well.

Mr. HINCHMAN. I did not mean to suggest that I am concerned about the current standards being applied by the Department, but it is fair for us to give you an understanding of what those are. I am not the Department's ethics officer. I do not know precisely. I will have to provide that and the names you ask for.

Mr. DORGAN. There are standards being applied?

Mr. HINCHMAN. There are standards with respect to what officers of the Department are required to separate themselves from participaton in price support and price stabilization programs, yes, sir.

Mr. DORGAN. Ostensibly then, anyone now receiving benefits under the PIK program has been reviewed and determined by the ethical standards currently in practice to be all right? Am I to imply that from that?

Mr. HINCHMAN. Assuming no mistake has been made, yes, sir.

Mr. DORGAN. When can we expect that list?

Mr. HINCHMAN. Mr. Dorgan, I have to find out the answer to that question. I do not know how long it will take to get that information.

There are a lot of ASCS employees—those are the ones of principal concern—even in Washington.

Mr. DORGAN. But if those names have been reviewed for ethical purposes at the Department level, I assume there is a list existing somewhere.

Mr. HINCHMAN. The information regarding the extent to which those officials participate in farm programs is limited to the most senior of those officials, and by the way the number of officials who are required to file financial disclosure forms may not conform to your definition of senior officials. We would have to explore that with you, but assuming that it does the fact that they have farm interests will appear.

Those records will not indicate whether the farms are in the PIK program or if they are, whether arrangements have been made to isolate those individuals from the benefits of that participation. It is easy for us to do that with respect to the most senior policy officials, those whom you see before your committee, our Assistant Secretaries and agency heads.

It is far more difficult with respect to the literally thousands of other employees working in the Department in Washington.

Mr. DORGAN. Can we start with those we see and take a little longer for the rest?

Mr. HINCHMAN. Yes, sir, although as I think I indicated there are no Presidential appointees involved or any senior official of ASCS, but yes we will work at that as rapidly as we can.

Mr. DUNCAN. Will the gentleman yield.

Chairman STARK. I will yield in a minute. I think his time is about to expire unless he has more questions.

Mr. DORGAN. I do have two other questions.

Chairman STARK. Please proceed.

Mr. DORGAN. One other question. I recall from President Nixon's memoirs one of the points he made is in his second term he really wanted to get at this question of the fact that 10 percent of the biggest farmers in the country get 50 percent of the benefits of all of the farm programs. I was kind of interested in that, and the report pretty much confirms that general figure.

If in the absence of a $50,000 payment limitation, if we have more PIK programs in the future, will not that 50 percent for the 10 percent of the larger producers not grow much larger than 50 percent? Will there not be a distortion in the amount of resources we develop in Congress to go to agriculture going to the largest producers in the absence of limitations?

Mr. AHALT. Congressman Dorgan, history will suggest that you are going to get that kind of concentration. My only response to your question would be that I do not see any basis for concern. We want to have an efficient agriculture. We must have an efficient agriculture to compete in the world market.

Therefore, I do not see anything to change those basic kinds of trends except to say while we have large farms in the United States today we also have a bimodal distribution of farms. We have a large number of relatively large farms and a growing number of small farms now occurring in the United States.

Mr. DORGAN. Well, Mr. Ahalt, the structure study which was developed by USDA, which pays your salary, disagrees with your conclusions. That study suggests that the concentration of ownership of farmland in this country is not produced by natural economic conditions. It is produced artificially through our Tax Code and the farm program.

I see very little evidence to refute that, and all I am saying is the PIK program moves us farther and farther in that direction and that moves away from the whole market concept that you hold so dear, and I and others do as well.

Mr. AHALT. Congressman Dorgan, I would argue that the benefits of the program do not influence the distribution. We are trying to run our programs so that they are neutral with regard to the benefits. I know that is a point of disagreement, but the fact that the larger producers receive larger PIK entitlements is no different than the fact that larger producers may use the loan program more.

Mr. DORGAN. I understand. Let me just conclude. I know Mr. Duncan and others want to question, and I appreciate the indulgence of the Chair.

Let me say it is with disbelief I hear you suggest that the PIK program is neutral with respect to the questions raised in the structure study. That study took a long time and cost a lot of money and raised some very important conclusions which I think you are ignoring.

I was concerned about that 2 years ago, and I am as concerned today hearing you answer, but I appreciate it.

Thank you.

Chairman STARK. Mr. Hinchman, are you able to give Mr. Rank a legal opinion that any payments received by Cinco Farms, Inc. of which he is a participant in excess of $50,000 are legal payments?

Mr. HINCHMAN. I assume by that question you mean for me to address an issue which relates not only to Mr. Rank but to others who receive payments in excess of $50,000.

Chairman STARK. Yes.

Mr. Hinchman. I said before the Department made the judgment last winter that we could carry out the program outside the payment limitation. I said we regard that as a difficult question.

It is also true we regard the GAO opinion reaching a contrary result as a serious matter.

Chairman Stark. It is also true no written opinion was ever made.

Mr. Hinchman. That is correct. We have in our Department enormous respect for both the expertise and professionalism of GAO's General Counsel. Mr. Van Cleve himself is a man of long experience and distinguished reputation, and as I said this is, therefore, a serious matter.

We received the opinion only 2 days ago in the Department. I saw it only yesterday. We are currently reviewing it.

Chairman Stark. If in fact it turns out that these payments are not legal then would it not be required that Mr. Rank return his $500,000 to the Government legally, not ethically?

Mr. Hinchman. As I suggested earlier I am not sure that conclusion follows. There seems to me to be both a legal and a policy question with respect to the appropriateness of requiring the return of the PIK commodities or their value when the producers who are involved have already undertaken their——

Chairman Stark. When did you make this decision the PIK payments could exceed $50,000 approximately? When was that in the Department?

Mr. Hinchman. The program was announced in early January.

Chairman Stark. Mr. Rank participated in the discussions of the program back in January, Mr. Ahalt?

Mr. Ahalt. Participated?

Chairman Stark. Mr. Rank was part of the designing of the PIK program? He participated in the discussion?

Mr. Ahalt. He administers the ASCS.

Chairman Stark. So he was aware of the question of whether or not payments in excess of $50,000 might be legal or not; was he not?

Mr. Ahalt. Well, he was award of the issue, but, Mr. Chairman, as I indicated earlier when we announced the program we announced the payment limitation did not apply.

Chairman Stark. But he was present in discussions where there was some controversy as to whether that was correct or not so he knew there was no legal opinion and there was some question as to whether or not that was the case.

Mr. Ahalt. This is probably Mr. Hinchman's response, but I think it is important, Mr. Chairman, that Mr. Hinchman said there is no written legal opinion on that matter.

Chairman Stark. So I just repeat once more, Mr. Hinchman. Mr. Rank was party to discussion and had to be aware of the disagreement within the Department or the question within the Department as to whether or not payments in excess of $50,000 for the PIK program were in fact authorized and legal as I use the term. Is that correct?

Mr. Hinchman. Yes, sir.

Chairman **Stark**. He cannot have any written opinion from the Department that they are in fact legal because none exists. Is that not the case?

Mr. **Hinchman**. He does, however, like all participants in the program have a contract from the Department.

Chairman **Stark**. Which he helped to write unlike most participants. He is kind of on both ends of that string, is he not?

Mr. **Hinchman**. That is true, sir. That circumstance is not unrelated to the letter we have placed in the record.

Chairman **Stark**. Thank you very much. I did not mean to belabor that extensively.

Mr. Duncan.

Mr. **Duncan**. Thank you, Mr. Chairman.

Could you supply for the record the names of the Members of the House and Senate who participated in the PIK program? That would seem to me not too big a task.

Mr. **Hinchman**. It would take us until February to collect that information ourselves.

Mr. **Duncan**. I think we are entitled to receive that.

Mr. **Hinchman**. If the Members were willing to volunteer that information we could receive it sooner, but if we had to find it from our records it will take until February.

Mr. **Duncan**. I think it is important that we have that because I understand there are a number who do participate.

Thank you, Mr. Chairman.

Chairman **Stark**. Mr. Moore.

Mr. **Moore**. Thank you, Mr. Chairman.

Mr. Chairman, I think we have gotten the opinion here, at least I got the impression, that perhaps USDA had acted with no substantive information whatsoever in thinking that the PIK program was in fact exempt from the $50,000 limitation. I am not sure that is correct having studied the matter.

First, let me ask a question of Mr. Ahalt. Are you of the impression that the Secretary himself was of the opinion that PIK payments in excess of the $50,000 payment limitation were legal?

Mr. **Ahalt**. Congressman Moore, very much so. We have felt we were acting within the law obviously to announce the program and to indicate that the payment limit did not apply.

Mr. **Moore**. Second, I am led to believe that Congressman Paul Findley from Illinois was the author or coauthor of the payment limitation. Can you confirm that?

Mr. **Ahalt**. That is correct. Probably 10 or 12 years ago.

Mr. **Moore**. I happen to have spent two terms on the Agriculture Committee and distinctly remember when I was on that committee trying to increase that payment limitation while Mr. Findley was a member of that committee and he strenuously opposed it. I remember him claiming that he was the author or coauthor of the payment limitation. You have confirmed that.

Is it not a fact that on September 9, 1982, when the PIK legislation was being considered by the Senate Committee on Agriculture that Mr. Findley testified and testified very clearly that in his opinion as the author of this provision it did not apply to a payment-in-kind situation?

Mr. **Ahalt**. As I recall that is correct.

Mr. **Moore**. This appears on page 13 of the GAO memorandum. I simply point that out to my fellow members of the committee. But that is in the record already as the memorandum is in the record, and I think it is pertinent legislative history, although GAO chooses not to place a great deal of credence on it.

Third, I ask Mr. Ahalt if he is aware of the debate occurring on the House floor December 18, 1982, when the PIK program bill came up on the House floor and the chairman of the House Agriculture Committee, the gentleman from Texas, Mr. de la Garza, was speaking on the House floor.

I quote only in part but would submit for the record, Mr. Chairman, the two pages from the Congressional Record H10317 and 318 from December 18, 1982. The chairman of the Agriculture Committee in part said and I quote, "The Secretary of Agriculture feels he has the authority now, but this would be to clearly give him the authority on those two obstacles. It does not give him any authority he does not now have." That is the chairman of the House Agriculture Committee, and I note in reading the Congressional Record no one spoke up on the House floor opposing that interpretation. The bill in fact passed that day, meaning the House Agriculture Committee and the House of Representatives seem to have agreed with that interpretation of the law.

Mr. **Ahalt**. That is correct, Congressman Moore. This moved through both the Agriculture Committee and the full House of Representatives very quickly.

Mr. **Moore**. I would like to submit that for the record, Mr. Chairman.

Chairman **Stark**. Without objection, it will be made a part of the record.

[The information follows:]

[From the Congressional Record, Dec. 18, 1982]

To Improve Programs for the Stabilization of Agricultural Prices and Production

Mr. **de la Garza**. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 7439) to improve programs for the stabilization of agricultural prices and production and for other purposes.

The Clerk read the title of the bill.

The **Speaker** pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. **Wampler**. Mr. Speaker, reserving the right to object, and I shall not object, I yield to the distinguished gentleman from Texas for an explanation of the bill.

Mr. **de la Garza**. I thank my colleague for yielding.

Mr. Speaker and Members, this is an attempt to enact legislation which would remove two potential obstacles for the Secretary of Agriculture to implement a new program in agriculture called payment in kind. It will have no cost at all.

More so, it has the potential of a possible savings of $4 to $6 billion.

All this does is to allow the Secretary, in the promulgation or in the proposal which he has, to take from surplus commodities that we now have, utilize those surplus commodities to give to the farmers, who would take land out of circulation rather than pay money for that.

The Secretary of Agriculture feels he has authority now, but this would be to clearly give him the authority on those two obstacles. It does not give him any authority he now does not have. It does not freeze prices, it does not tamper with the program that is in place at this time, nor is it intended to do that. It just gives him clearance in those two areas: One, the release price on the surplus commodities; and second, an area where there is a payment limitation. This does not disrupt that but allows him to use that surplus grain that we now have in storage and are paying storage fees for.

Later in the year, next year, we will come back, take a look at the finished product. The committee would keep jurisdiction and will keep oversight. This is exactly what we need to do at this point in order to facilitate the finalization of that prospective program.

Mr. **Wampler**. Further reserving the right to object, Mr. Speaker, I yield to the distinguished gentleman from Washington (Mr. Foley).

Mr. **Foley**. I thank the gentleman for yielding.

Mr. Speaker, I want to say that I support Chairman de la Garza's request. I think this is a wise action to take at this time to deal with the pressing and very serious problems that are coming forward in agriculture. This program may be able to be of assistance, and I urge the adoption of the bill.

Mr. **Wampler**. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Pennsylvania.

Mr. **Walker**. I thank the gentleman for yielding.

Mr. Speaker, do I understand there is no budget impact from this bill and that, in fact, the only impact might be positive in that the Federal Government would achieve a savings of several million dollars?

Mr. **Wampler**. Further reserving the right to object, I think the gentleman is correct. As a matter of fact, it is the feeling of the Committee on Agriculture that this could result in a substantial savings to the taxpayer and also help stimulate the agricultural economy of this country.

It is our belief if we can get the recovery to begin there, then the whole economy is going to recover. This is a positive step.

Further reserving the right to object, Mr. Speaker, the Secretary of Agriculture appeared before the House Committee on Agriculture on Thursday of this week and basically asked for the authority that we are granting him so that the so-called PIK program, or payment in kind, can proceed in an expeditious manner and in an orderly way so that we can get benefit during this crop year.

Further reserving the right to object, Mr. Speaker, I yield to the gentleman from Iowa (Mr. Smith).

Mr. **Smith** of Iowa. I thank the gentleman for yielding.

Mr. Speaker, I would like to ask the gentleman from Virginia and the gentleman from Texas: This is not to be interpreted as an endorsement of the bill approved by the subcommittee in the Senate, is it?

Mr. **Wampler**. No, it is not, as far as the gentleman from Virginia is concerned.

Mr. **de la Garza**. Mr. Speaker, will the gentleman yield to me?

Mr. **Wampler**. Further reserving the right to object, I yield to the chairman of the committee.

Mr. **de la Garza**. I thank the gentleman for yielding.

I might add further, it is not even intended to be an endorsement of the program we are speaking about. It is only to facilitate its movement so we can take a look at it in its finished or final form.

Mr. **Wampler**. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Kansas (Mr. Glickman).

Mr. **Glickman**. I thank the gentleman for yielding.

In no way in this bill are we in any way modifying the support levels, target prices, or loan rates that are in existing law; is that correct?

Mr. **Wampler**. Further reserving the right to object, Mr. Speaker, the gentleman is correct.

Mr. Speaker, I yield to the gentleman from Nebraska (Mr. Daub).

(Mr. **Daub** asked and was given permission to revise and extend his remarks.)

Mr. **Daub**. Mr. Speaker, I rise in support of the gentleman's motion, and commend him for his insight on this matter.

Action must be taken to assist our ailing agricultural sector, and Secretary Block's payment in kind, otherwise referred to as the PIK proposal, certainly merits consideration. This motion will allow the Secretary clear discretion to further develop and possibly implement a program, subject, of course, to the Congress ultimate approval, which would assist greatly in reducing surpluses of grain.

With over 2 billion metric tons of wheat and over 1 billion metric tons of corn carried over in the reserves from 1981, we must take action soon. By giving the Secretary authority to transfer ownership of reserve grain to farmers in return for additional acreage reduction, I believe the possibility exists for greatly relieving the financial straits of farmers and raising market prices down the road.

I, therefore, am cautiously supportive of the Secretary's effort on this behalf, and look forward to hearing of more detailed development of the PIK proposal. I thank the gentleman for his efforts.

Mr. **Wampler**. Further reserving the right to object, I yield to the distinguished gentleman from California (Mr. Brown).

(Mr. **Brown** of California asked and was given permission to revise and extend his remarks.)

Mr. **Brown** of California. Mr. Speaker, I am in support of this proposal made by Chairman de la Garza. I think it is a necessary and useful thing to do and I would just like to comment somewhat in response to the inquiry of the gentleman from Pennsylvania that the primary effect of this is to facilitate a process which will be beneficial to the budget.

I am not as equally convinced it is going to benefit the farmers, but I know it is going to be of benefit to the budget and I am willing to take the gamble that it will be beneficial to the farmers and allow the administration to go ahead with this, and I would urge other Members to do the same.

Mr. **Wampler**. Further reserving the right to object, Mr. Speaker, I yield to the gentleman from Louisiana (Mr. Breaux).

Mr. **Breaux**. I thank the gentleman for yielding.

Mr. Speaker, I would like to ask the chairman of the full committee: Did I understand that the legislation before us does not really establish in any kind of detail a PIK program: it just basically gives the Secretary clearer authority, on his own, to enact a program providing for Payment in Kind?

Mr. **de la Garza**. If the gentleman would yield to me further, it does not even do that, let me say to the gentleman. It just clears two areas, clears up two areas of possible problems for them. The final enactment of the program, the final package, we insist and reserve the right to take a look at it at the end. This only facilitates the implementation to the stage where we can take a look at it.

Mr. **Breaux**. Mr. Speaker, I support the efforts of the Committee on Agriculture.

I would urge that in the next session, we look at the possibility of a PIK export program for those crops for which it would be beneficial.

Mr. **Wampler**. Further reserving the right to object, Mr. Speaker, I strongly support this legislation. This is what the administration requests.

I urge my colleagues to act favorably upon it.

Mr. Speaker, I withdraw my reservation of objection.

The **Speaker** pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the bill, as follows:

H.R. 7439

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That effective for the 1983, 1984, and 1985 crops, the Agricultural Act of 1949 is amended by adding at the end thereof a new section as follows:

"EXEMPTION OF PAYMENTS IN KIND FROM PAYMENT LIMITATION AND SALES PRICE RESTRICTIONS

"Sec. 423. Any land diversion payments made by the Secretary of Agriculture to assist in adjusting the planted acreage of the 1983, 1984, and 1985 crops of wheat, feed grains, upland cotton, and rice pursuant to this Act, other than the diversion payments mandated by sections 107B(e), 105B(e), and 101(i)(5) of this Act as amended by the Omnibus Budget Reconciliation Act of 1982, may be in kind, shall not be sales for purposes of section 110 and 407 of this Act, and shall not be payments for purposes of section 1101 of the Agriculture and Food Act of 1981."

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. **Moore**. This is not a new issue, is it, this question about supply and demand of agriculture commodities. Has this not been a chronic problem in agricultural programs?

Mr. **Ahalt**. Forever, Congressman Moore.

Mr. **Moore**. We have had these problems for generations. PIK was a new and novel attempt to try to solve the problems—in the cheapest way possible?

Mr. AHALT. That is correct.

Mr. MOORE. As I understand it we were faced with either paying out more money in deficiency payments or paying less money but making larger crop payments that would also help reduce the supply of various crops. Is that essentially the choice we had?

Mr. AHALT. That is correct. If we continue to make cash payments we would have large disbursements, but we could not get the supply adjustment because we could not get the level of participation through a straight cash-diversion payment.

Mr. MOORE. So that was a policy determination. To the best of the Secretary of Agriculture's knowledge, to the best of the author of the amendment on payment limitation's knowledge and to the best of the chairman of the House Agriculture Committee's knowledge and the position of the House of Representatives in 1982, payments in excess of $50,000 were not illegal.

Mr. AHALT. That is correct.

Mr. MOORE. Thank you, Mr. Chairman.

Chairman STARK. Thank you, Mr. Moore.

Mr. Hinchman, I would ask one other question if it would be possible. In the letter from Cinco Farms, Inc. to Mr. Rank it refers to Mr. Rank's letter of September 22, 1983. I wonder if the committee could have a copy of that, and they also close by saying they will advise the Secretary by letter about their study by their attorneys and their accountants. If that is not privileged I would certainly appreciate having a copy of whatever response has come subsequent to October 21, 1983.

Mr. HINCHMAN [Nods affirmatively].

[The information follows:]

Mr. Rank's letter of September 22, 1983, to Mr. Harold Weeth appears earlier in the record. There has been no response from Mr. Weeth since his letter of October 21, 1983.

Chairman STARK. We were told that Secretary Regan would be here and on a tight time schedule. If there are no further questions from the gentlemen——

Mr. DORGAN. I have just one more question, Mr. Chairman, if we have time to ask it.

Chairman STARK. Certainly.

Mr. DORGAN. As I recall the PIK program, and I would like Mr. Ahalt to refresh my memory, the original portion of the PIK program established a target of about a 23-million-acre reduction and that was under the first approach, the first phase of the PIK program. Beyond that phase, the Department made an administrative decision to allow the whole farm base bids to be used, and the second phase then allowed some very large producers to come in which has caused much of the kind of information and difficulty to see as a result of the disclosure of it at this hearing.

Why did the Department go ahead with phase 2, given the fact that under phase 1 it appeared the Department exceeded its original goal of 23 million acres?

Mr. AHALT. Well, Congressman Dorgan, we felt that we had again to make as large an adjustment in 1983 as we possibly could at the same time taking into account the effects on the related industries. That is why we allowed whole base bids.

As I recall we allowed them to come in as long as they did not exceed 45 percent of the acreage base in any one particular county. At was a clear decision on our part, Congressman Dorgan, to try to get as much adjustment as we could.

As I recall, however, your point that the whole base contributed to a large number of large producers coming in, I think that that is not my recollection, but I would have to review that.

Mr. DORGAN. This whole problem with the whole farm bids that has resulted in the big payments reminds me of a quote a friend of mine often uses in Bob Wills lyrics. "The little bee sucks the blossom and the big bee gets the honey. The little guy picks the cotton and the big guy gets the money."

That is a problem we see with this sort of program today, and that is the problem we will have to consider for many years to come with regard to these kinds of programs. I appreciate the response. Thank you.

Chairman STARK. I want to thank you, Mr. Ahalt, Mr. Noakes and Mr. Hinchman for your testimony this morning. We will be looking forward to talking more with you about this problem in the future.

I have asked the indulgence of the Honorable Jim Nichols, the commissioner of the Minnesota Department of Agriculture and we will hear testimony from the Secretary of the Treasury and from our colleague Mr. Archer on the bill, H.R. 4206, to amend the Internal Revenue Code of 1954 to exempt from Federal income taxes members of the Armed Forces of the United States who die as a result of hostile actions overseas.

I am proud to say that I have cosponsored that with many other members of this committe, and I would like to———

I think we might have worn down his patience. If Mr. Nichols is not with us I will ask unanimous consent that his prepared testimony appear in the record, and the committee apologizes to Mr. Nichols for keeping him waiting beyond the time when he might have expected to testify.

It is my understanding at the completion of this quorum call there will be a 5-minute vote, and the committee will recess until the completion of that vote.

[Recess]

Chairman STARK. We want to welcome Mr. Rollyson back. I am sorry we will hold Mr. Rollyson in abeyance. I apologize again.

We will have Mr. Nichols from the State of Minnesota. You have a prepared statement. We are back on the PIK bill. Why do you not proceed in any manner you choose. Your full statement will appear in the record. Thank you again for your patience.

STATEMENT OF JIM NICHOLS, COMMISSIONER, MINNESOTA DEPARTMENT OF AGRICULTURE

Mr. NICHOLS. Thank you, Congressman, for inviting me here. I have never had an opportunity to testify before a committee in Washington.

I have been in town about an hour and a half now. I appreciate the indulgence of the committee for listening to me here.

I would like to say I am here as a farmer. I am a for-real farmer. I do it for a living. I am here talking as a farmer.

I farm 500 acres. I have a cow-calf operation. My dad was a farmer. My granddad was a farmer. My brothers all farm. We are farmers.

I do not have too many good things to say about Secretary Block's programs, and I will say that from a farmer's perspective first of all, so that the record is clear here. My PIK payment was about $12,000. I am not getting rich off this thing, and we do not have any cotton in our States, Mr. Chairman, so I did not get any cotton money.

I was surprised when I came into the door. Mr. Ahalt was testifying this program saved all kinds of money. I have never before received a payment as large as $12,000, and I doubt if anyone else ever got a $3 million payment, $2 million or $1 million.

This program was expensive. It was probably obscene. It was so lucrative it was obscene. It is unbelievable and I do not know how they could get up here and say they save money unless they do a different arithmetic than we do in Minnesota.

The other thing I am here to say is the farmers are catching a lot of flack from the PIK program. We get blamed for a lot.

Eight months ago we did not know what PIK stood for. It was not our idea, and while something had to be done I definitely agree with that, and I think considering the surplus we had the PIK program was unavoidable. What I would like to talk about a little bit—and I will be brief—is how we got into this mess and what is happening because we are going to repeat it.

I am here to make a plea to this committee not to do this again. I am plowing fence row to fence row next year. Everyone of my neighbors are, and I expect every farmer in the Nation will do the same.

When we do that we will have another mountain of grain again because we know what we sell each year is about 7 billion bushels. If we come back with this logic again they will probably come back with another PIK program and we can sit here and argue whether that was really cash money or not and whether or not people should pay and what the $50,000 limit is.

I guess you can argue that forever, but as far as I am concerned that corn gets turned into money and there should be some limits somewhere because I am turning my corn into money and I suspect everyone else is too. We cannot afford these kinds of programs if Secretary Block had made any attempt and I also want to single out the last year of the Carter administration because there was not a farm program anyone would participate in in 1980, 1981 or 1982 and the surplus killed us.

I believe the first job of the Secretary is to manage the supply. That is good not only for the farmer but for the consumer.

There are very few consumers in this Nation who appreciate the fact that we raise 4.3 billion bushels of corn this year and we need 7 billion. If we did not have a surplus of grain in the bin we would have to go to the world market and buy, and this Nation has never done that.

Think of the cost to the consumers if we had to go out there and buy corn and soy beans on the world market and haul it back up our rivers instead of down. Where would our bottoms of trade deficit be?

So supply management is good for the consumer, and there will be some cost for storing that grain in the bins. That is unavoidable. I think the consumer will have to share in that cost because when there is a drought they get the benefit.

One of the reasons they argue for this PIK program is because we are saving all that storage cost. Some storage costs are necessary. You will have to keep about 1 billion bushels of corn in storage and several hundred million of wheat and soybeans.

The problem with the farmer-held reserve, actually the beginning of that was I think the best farm program I have ever seen, but the problem was they did not cap it. It was a big flaw in the Carter administration. Everyone was farming then to put grain and the reserve—you need to cap the reserve. That was a mistake.

You also need to take a look at how much we consume and how much we raise, each year for the last 3 years, and we will use it next year 5 billion bushels of corn in this country. We sell about 2 billion overseas and our sales are down because of the strong dollar thanks to this deficit we got.

As a farmer that deficit is destroying us. We get cut two ways. It makes the dollar so strong we cannot sell overseas plus it drives up our interest cost so you take away our market and increase our costs, a heck of a deal.

If you know your market is 7 billion bushels of corn and you can predict the same in the 2 billion range with soybean and wheat you ought to think about raising that much grain. We raised 1.8 in 1981; in 1983, 4.3 billion bushels. Next year we might raise I would say at least 8.5 billion bushels of corn given a normal crop, normal weather, maybe up to 9 billion bushels of corn.

Planting intentions are already over 1 million acres. If the job of the Secretary is to manage the supply and you have a constant use of 7 billion bushels and you raise 8.1, 8.3, 4.3, and 9 or 8.5 you have got a mess, and worse than that, when we have got big crops the price collapses on the farmers so then we have real problems in the farm economy. You can wrestle with bills like moratoriums on farm foreclosures which are ridiculous. They are a symptom of the disease.

You have got to look at the disease. More than that the implement dealer is out there. The guy on Main Street has been struggling for a long time.

When you came along with this PIK program it just about took him out. He needs some help. Now we are going to go back and repeat that again. They are doing absolutely nothing in 1984.

I have farmed all of my life. Thirty-two years ago I went to the field for the first time. I will not participate in the program in 1984. It is worthless.

You are trying to make the wheat program somewhat attractive. Maybe you will succeed. I do not know. But as the wheat plan now stands by the Secretary no one will particpate in that either so you already know you have a huge carryover stock with wheat so you have got to do something.

I do not know. I once asked Secretary Block how he sets policy. Do they have kids writing these bills? Do they have darts they throw at the wall and hope to get lucky or do they really believe they will work?

I cannot imagine they really thought they would work, Mr. Chairman, and now they will admit that they have no farm program for 1984 and they make no attempt to do anything about it. I am really upset with that because PIK bought us a little bit of time, not because our income was increased that much, but because our expenses were down.

We need a price and we need a crop next year or these farmers are in trouble. One last thing and I will quit. To show you how stupid the Secretary is I am going to use this dairy bill as an example because I have a personal thing on this.

He believed cutting the dairy price would solve the problem. The Federal milk marketing orders apply to maybe two-thirds of the Nation at best.

The Southern States will get—your State does not apply, Mr. Chairman. You will not get a milk price cut in your State. California is not in the Federal milk marketing system.

The Southern States get over order premiums so they will not get a price cut. Now if the Secretary believes cutting the price of milk will cut production how is it going to work in those States that do not get a price cut? Almost half of the farmers in this Nation are under that program.

The reason I am making this plea is you are going to consider it here next week—will not get a price cut. Why would they have a cut production? The second thing is they cut the price last December and we got an increase of milk every month since then. We had a 12-billion-pound surplus in 1982. We have got a 16-billion-pound surplus in 1983.

We could have a 20-billion-pound surplus in 1984. John Block cut the price to save money. The only costs are the support price costs. The only cost was a surplus. He increased the surplus by 4 billion pounds.

As a result of his action that cost the taxpayers $650 million to buy back that surplus. What the guy has done to the farmers is I figure he is just incompetent. I think they wanted a guy who looked good on televison who could legitimately claim to be a farmer and would read the speeches that OMB wrote very well, and he does that.

What he has done to the farmer is a disaster. I figure the guy is worse than the disaster we just had, but what he has done to the taxpayers is criminal. Think about the cost of $10 billion to $11 billion for the farm program because he would make no attempt to manage supply which is his job and think about the cost to the taxpayers of the milk program when he cut the milk price.

That cost the taxpayers to buy back that extra surplus $650 million and they are going to do it again next week, and I would like to appeal to you not to go out and cut this milk price next week because it is not going to solve your problems. Half of the Nation is exempt from the price cut, including your State.

Those farmers in your State cutting the price—they do not care. It will not affect them at all. They will continue to increase production, and if you cut it $1.50 in my State where we are making about a buck and a half now maybe $10.80, so our margin goes down about 30 cents a hundredweight. We have got to dramatically increase our production to make up for that.

There is no logic to anything they say, and I would encourage you when they come in here and tell you these things not to listen. They do not have any successes they can point to and it is getting worse.

I know you are in a hurry.

Chairman STARK. No, Mr. Commissioner, you can go right ahead.

Mr. NICHOLS. I will conclude my remarks there, but we cannot afford much more of this, and I do not think the taxpayers can either.

Chairman STARK. I think my colleage Mr. Dorgan can engage in a dialog with you. I am not sure I remember as a little kid. We used to milk 40 head in Wisconsin where I grew up, and I am not sure how you cut production.

I mean you cannot sell the cows for hamburger. At least it is not very good hamburger. It does not seem to cost a whole lot extra to service a cow if you have got it there. I do not know what the incentive is to not go along. I do not know how you cut dairy production. I have never talked to the cows about holding back, but I do have one question that maybe you can shed come light one.

It seems to me as you get much above $28,000 in cash income on a farm if you are a family of four you are still below the 20 percent tax bracket and it is pretty hard to get below that unless you are an oil company or a large corporate farm in California. [Laughter.]

Chairman STARK. Is there much in the way of tax incentives? We tried very hard to make the family farm an inheritable entity that can continue, but dealing in the sense of what we can do in the Tax Code and that is what prompted this. That is how we got into the PIK program in this committee.

I thought a pick was something you dug for gold with, and now I am sure of it. [Laughter.]

Chairman STARK. Are there things we could do? Would it have made a difference to you whether you could have postponed that payment over 1 year or another as to whether you would have gone in? Are there other things this committee should consider in the Tax Code that will help what I would consider the family unit farm?

Mr. NICHOLS. No, Mr. Chairman. I know you are stuck dealing with the tax issues here, but the farm situation has been as Mr. Dorgan indicated a while back—income tax is not the problem we are facing now. We have not faced it for about 5 years. Farmers really have not made any money since 1976 really.

We do not care what tax incentives you provide. It does not really affect us. I suspect it would affect some of those $3 million corporations. My State does not allow corporate farms.

Incentives that you could provide—the one incentive you have to control production is the loan rate. What is important to me—I have two choices when I combine my corn and I just got done.

I can haul it to town and sell it or put it in the bin. If I haul it to town and sell it I have to take the price at that time and it is always the lowest except when we have a drought and it is the highest. Three years out of four you get the lowest price.

If I put it in the bin I have got bills to pay. It is all on credit in the farm. We are capital intensive. I have got to get a loan against the corn to pay the bills. There is no other way.

The biggest thing in my State is the Commodity Credit Corporation and I might add they are the best. They do a good job, and they do not hassle you. But when you cut the loan rate as Secretary Block has done on wheat from $3.65 and $3.30 and froze it on corn, the loan rate in my county is $2.38 which is well below the cost of production.

I get really mad when John Block said we cannot raise the loan rate because farmers will then farm for the loan. The first criteria to get the loan is you have to agree to cut production by 20 percent or more.

I will show you how you got into this mess. On July 15, 1982, when you certified your acres at the ASCS office—every county has one—the loan rate or the case price was $2.45 by elevator. The loan rate was $2.38. To qualify for that $2.38 loan I had to go out and plow under 20 percent of my corn acres. I did it because I did not know what the cash price would be in the fall.

In the fall the cash price went to $1.70. Eighty percent of the farmers in my county and this nation did not participate in the program, and they had to sell the corn in the fall for $1.70. That is where we are at.

Corn went to $3.25 this spring. I sold my corn for $3.25, paid off the loan and the interest. It did not cost the taxpayers a dime and I made some money.

I have paid off all of my loans since I started farming and expect unless something bad happens to continue to do so. It did not cost the taxpayers a dime. The loan program is the best program that was ever started way back in 1932. That is why we started it.

Now John Block by cutting the loan rate it means no farmers will participate in the program and agree to cut production for a loan that is so low you cannot even make the cost of production. Worse than that, he says we cannot keep the loan rate high, and the loan rate is the price of grain.

What we need is the price. You can control it right here with the loan. He said we cannot keep the loan rate high because the rest of the world knows that is the price of grain in the world and they will increase production so we cut the loan rate for wheat from $3.65 to $3.30.

What did Canada do in response? They increased production. You would think if there were any logic to his statement they would have decreased production. None of his theories have any basis in fact.

That is what we need. We need the loan rate, and if I ever make some money you can talk about income tax.

Chairman STARK. Mr. Dorgan.

Mr. DORGAN. Mr. Nichols, the clarity with which you have expressed yourself indicates to me you have no legal training. Is that the case? [Laughter.]

Mr. NICHOLS. I noticed you did grill that other guy sitting here so I thought maybe I would not use them words. I do not have any law training.

Mr. DORGAN. You use a certain delicacy in the way you state things that comes uniquely from Minnesota and the Dakotas. The points you have made about what has led to this PIK program are points that are made in a statement from the House Subcommittee on Government Operations chaired by Congressman English.

He goes back to 1981. He takes a look at the set aside program that promised things it could not deliver. The result was virtually no participation in the set aside program. In fact, before that, the first time John Block came to the Agriculture Committee, the point was you just plant everything you want in America, and we will take care of it. We will sell it overseas with no problem at all, a simple process. We are free market disciples. We will pursue the free market. Just plant her up and we will ship it overseas and sell it some place.

The second time—well, not the second time, the second year, well, we miscalculated the first year. Now what we need to do is cut back a little so we are going to ask everyone to cut back 15 percent which means, of course, that those who elect to do so take the 15 percent of scrub prairie out of production that was not in production in the first place and if it is 15 percent that will take care of the problem.

We said that will take care of the problem. The 15 percent that will go out of production will be the worst 15 percent on the farm. With no incentive to participate in the 15 percent you will not get people to participate any way, so it will not work.

Oh, it will work. You have got to have faith. This was economic faith healing that was going on in 1982 and late 1981. The fact is it did not work. It was a colossal failure. We accumulated the largest stocks in the history this country as a result of it.

Then we came to PIK and that was a demonstrated reason for the PIK program. I just want to say I share your concern and your interest. Has everyone deserted me here? I must have been very interesting when I started. [Laughter.]

We have a vote on the floor and I must leave, but I appreciate your coming to the committee. I think you did an excellent job on your testimony, and I thank you.

Mr. NICHOLS. Thank you, Congressman. I appreciate it.

[The prepared statement follows:]

STATEMENT OF JIM NICHOLS, COMMISSIONER, MINNESOTA DEPARTMENT OF AGRICULTURE

Eight months ago there was not a farmer in America that knew what PIK stood for. Today farmers are being blamed by the media and consumers alike for the costly PIK program.

Before PIK few people were aware of the relatively small cost of farm programs. Now, the high cost of PIK is in the newspapers and on radio and TV almost daily, and after today's testimony by the General Accounting Office detailing those costs we are about to get a new round of stories on the $2 million PIK program payments to the large farmers.

All of this spells ill for farmers. We have obviously lost a great deal of credibility with the consumer and a great deal of political clout has been lost with the urban members of Congress.

The worst of it is that we are financially no better off than before. The PIK program provided a one year solution to a 50-year old problem.

I am not going to criticize the idea of the PIK program. Considering the mountain of surpluses that accumulated in the previous years, back to 1976, PIK was inevitable.

What I would like to point out to this Committee is that PIK and its high costs could have been avoided and that farmers could be better off financially than they are today without these government subsidies. The average family farmer adhors subsidies. PIX was clearly a subsidy program that cost-price squeezed farmers were forced to accept.

PIK only bought farmers one year's time, and a significant loss of political clout that suggests that the farm constituency may be even worse off next year.

What Secretary John Block has done to the American farmer through the first two years of his term with very low farm prices, the third year with higher farm prices and shockingly high government subsidies, and an indicated fourth year of price busting fence to fence production, borders on total incompetency. What Block has done to taxpayers borders almost on being criminal.

The one job of the Secretary of Agriculture is to manage supply. This is not only good for American farmers but as well for American consumers. Effective supply management will provide stable, fair prices both for farmers and for consumers.

Few, if any, American consumers appreciate the fact that when we had a major drought this year we simply want to the graineries and took our stored supplies. No other nation in the world enjoys the luxury of not having to buy grain supplies on the world market when disaster ruins domestic crops.

What would cost be to the consumer if we had to buy corn and soybeans on the world market and use our St. Lawrence Seaway and the Mississippi, Missouri and Ohio Rivers for imports instead of exports, to meet the domestic food needs of American consumers?

The Reagan administration and Secretary Block said their goal was to get government out of agriculture and to save taxpayers money. Since then they have proposed the most costly farm program in history and the largest reduction of food crop acreage in history.

I have farmed all my life. I went to the field for the first time 32 years ago and I have never seen tighter controls or more money spent than the PIK program. All of this from the Administration and Secretary that promised to get government out of agriculture and save taxpayers money.

John Block does not believe in supply management. He made no attempt to manage the supply in 1981 or in 1982. He came up with a costly management program in 1983. Farm response to this proposed 1984 management program indicates that he will make no effective attempt to manage supply next year. No farmer that I have talked to in the past month, and I have talked to hundreds, has expressed any intention of participating in the 1984 farm program that Block has outlined.

Using corn as an example, I would like to point out what is necessary to manage supply and what happens if we do not manage supply.

Everyone knows, especially the Secretary of Agriculture, what our domestic consumption and foreign sales of corn will be in any given year. Because these figures remain relatively constant, it is easy to project what next year's use of corn will be.

In 1981, 1982, 1983, and assuredly again in 1984 we have markets annually for about 7 billion bushels of corn. We use 5 billion bushels in the United States and we sell and export 2 billion bushels overseas.

In the previous two years we harvested back to back record U.S. corn crops, 8.2 billion bushels in 1981 and 8.4 billion bushels in 1982. In 1983, according to preliminary estimates that may be revised further downward, we're harvesting only 4.3 billion bushels of corn. In 1984 we may produce as much as 9 billion bushels of corn, barring a repeat of this year's drought.

Since the Secretary of Agriculture knows that in each of the four years of his term we have marketed 7 billion bushels of corn, a simple glance at the wild fluctuation in production figures indicates chaos in the market and in the prices.

Overproduction in three out of the four years causes markets to collapse. That is an economic fact of life not reserved exclusively for agriculture, but agriculture is the most vulnerable industry when supply management policy goes astray.

Over production and under production are devastating not only for farmers, but equally for the financial welfare of agri-business and the rural service communities. Over production depresses farm prices and income and the ability to pay bills or to buy new or replacement farm equipment. Under production raises farm prices but reduces the demand for supplies and services of agri-business in the rural community. Either way, the instability of federal farm policy and supply management programs impacts upon the taxpayer.

Since the only real responsibility of the Secretary of Agriculture is to manage supply, it is clear that John Block is making a feeble attempt at best to do his job.

The only tool, and the best tool that government has to manage the supply is the commodity credit loan program.

In order to qualify for a CCC loan the farmers must agree to reduce production. The Secretary says that increasing the loan rate will increase production. That flies in the face of the fact that he knows full well that to qualify for the loan the farmer must comply with the federal program and reduce production.

Loan rates must be set high enough to encourage participation or production will never be reduced. The loan rate is the basic element in the federal farm program. The Commodity Credit loan program was the only cost effective agricultural program. Until this year's PIK experiment, 92 percent of all of the past CCC loans were repaid with interest.

In 1982 John Block offered a corn loan rate of $2.38 per bushel in Lincoln County, Minnesota, where I farm. On July 15 of that year, the date for certification of acres in the ASCS program, the cash market price for corn was $2.45. In order to qualify for the $2.38 loan farmers had to plow under 20 percent of their normal corn acres. As a cooperator I plowed my corn crop into compliance.

But, because of the low loan rate, 80 percent of the farmers in my county and in the nation decided not to participate and did not plow under 20 percent of their acreage. The result was a market busting 8.4 billion bushel corn crop.

By that fall the local market price for corn had plunged by 75 cents from the mid-July level to only $1.70 per bushel. The majority of the farmers who had not complied with the federal acreage reduction program had no choice but to sell their corn at the disastrously low market prices because they were ineligible for the CCC loans.

I participated in the program, as I always have, and was able to put my corn in the bin and receive $2.38 per bushel loan. This spring I sold the corn at $3.25 and paid off my CCC loan with interest. It cost the taxpayers nothing.

This past weekend I finished combining my 1983 corn crop. As a farm program cooperator, I have two choices. I can take the corn to town and sell part of the crop or put it in the bin and store it under a CCC loan. As I have spring planting bills to pay I must take out a loan on the stored corn.

For the average capital short rural American, the Commodity Credit loan program has been and continues to be the major safeguard against the risks of unstable markets responding to weather and political impacts. The best farm lender, I might add from my own experience, is the local county ASCS office administering the CCC loan programs.

If 80 percent of the American corn producers rejected the federal program in 1982 when the corn loan rate was $2.38, how many do you think will participate in 1984 if the loan rate is still at $2.38?

In my opinion, and that of all of the farmers I have talked with in recent weeks, not many. For the first time since I started farming I will not participate in the 1984 program as it now stands.

It is time we started treating the disease. The Administraion wanted someone for Secretary of Agriculture who was a legitimate farmer, who would look good on television, and read the speeches exactly as the Office of Management and Budget wrote the script. John Block fits the bill very well. Unfortunately, OMB knows nothing about farm production and less about supply mangement or the predictable economic impact of its ill conceived strategies for cutting federal expenditures.

It is that type of pennywise and pound-foolish financial backfire that taxpayers and farmers cannot afford.

Another classic example of the stupidity of the Secretary's program is what I call the Dairy PIK program. The so called "compromise" dairy bill that has been ramrodded through the Senate and referred to the House with a "this or nothing" ultimatum. It is more of the same old backfire strategy of cutting the support rate in what will again prove to be an unsuccessful attempt to reduce surplus production, in this case milk.

In December, 1982, the Secretary cut the scheduled increase in the milk price support, keeping it frozen at the same level it has been since October 1, 1980, in what he said was an attempt to save taxpayers money. The result was that the 12 billion pound surplus experienced in 1982 increased to a 16 billion pound dairy surplus in 1983.

That one year surplus increase by 4 billion pounds cost taxpayers $650 million more, as a result of John Block's disastrous attempt to save taxpayers money.

Now he wants to go even farther, asking Congress to give him the authority to cut the milk price support frozen at $13.10 for three years by up to $1.50, down to only $11.60 per hundredweight.

Freezing the support rate hasn't been effective, nor has the assessments imposed finally last April 16 and increased this September 1 to $1 per 100 pounds of milk sold. Milk production and the surplus inventory of federally purchased dairy products has only continued to increase.

The PIK aspect of the Secretary's present proposal to cut the milk price support lies in the fact that the program is implemented through federal milk marketing orders. Six whole states, California, North Carolina, South Carolina, Maine, Montana and Wyoming, plus large areas of several other states, are not included in the federal milk market orders. Reductions in support prices will not affect milk producers in these exempt areas. They will be the beneficiaries at the expense of farmers in the traditional dairy states.

If there is any truth to the argument that cutting price will cut production, how will it work in the states that are exempt from a federal support price cut?

The Dairy PIK program will cost the taxpayers about $500 million, not including probable increased consumer costs for milk and dairy products.

Costs of the dairy supply management proglram should be recovered by a uniform assessment imposed nation-wide on all milk marketed, not limited to just those states and areas in the federal milk marketing orders.

Dairy PIK departs only slightly from the crops PIK. The Crops PIK was a one year program. The Dairy Pik is targeted for 15 months.

Results will be the same. At the end of the Dairy PIK there will be an even larger surplus of cheese, butter and powdered milk than we have today. John Block will have spent another $500 million, or more, of taxpayers money to accomplish exactly nothing, just as the $10 billion to $11 billion Crops PIK has achieved.

Mr. DORGAN. The committee will stand in recess.

[Whereupon, at 1:45 p.m., the hearing was adjourned.]

[Submission for the record follows:]

NORTH DAKOTA FARMERS UNION,
Jamestown, N. Dak., November 3, 1983.

Representative FORTNEY H. STARK,
Chairman, Select Revenue Measures Subcommittee, Ways and Means Committee, U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE STARK: We are pleased that your Subcommittee is taking the initiative to review the Payment-In-Kind Program and the unjustifiable, large amounts received by larger-than-family-sized farm units and corporations.

The North Dakota Farmers Union believes that such payment programs should be strictly limited to family-sized farm units. A family farm under our definition is an "economically adequate agricultural production unit that produces, after a fair return on investment, a family income comparable to the average income of families in other segments of the society."

We further believe that the waiver of the $50,000 payment limitation on the PIK payments was a violation of the intent of Congress.

When the Payment-In-Kind Program was formally announced in the January 12, 1983 Federal Register, we specifically responded to the United States Department of Agriculture concerning this and other issues. In our response to the Federal Register's proposed Interim Rule (7 CFR Part 770) we stated:

"The proposed PIK regulations essentially waive Section 1101 of the Agricultural and Food Act of 1982. Under the proposed regulations, PIK payments are not considered payments for the purposes of the payment limitations imposed by this section. While Section 1101 defines payments not to include loans and purchases, the definition does include 'land diversion payments.' PIK payments are for land diversion.

"Regulation 770.6(a) is not consistent with the law or the intent of the law. The PIK payment does have a value. Adjustments for quality of grain are based on the value of the loan rate of the grain. When using grain under loan or reserve grain for PIK grain, the loan or reserve contract carries a specific dollar valuation. Special provision is made under the proposed PIK regulations to permit producers who would normally exceed the $50,000 payment limitation to receive compensation through PIK provisions, and therefore, USDA recognizes a value being placed on PIK commodities.

"Section 1101 does not specify that the $50,000 payment limitation is only applied to 'cash' payments, but instead states, 'The total amount of payments . . . shall not exceed $50,000.' PIK payments, even though made in commodities, do have a specific value as determined by the loan or reserve contract, and therefore would come under the payment limitation provision of Section 1101.

"To waive this limitation through regulation is a violation of law and of the intent of Congress."

We are hopeful that the GAO study of PIK payments shares the conclusion that we presented earlier this year in the above paragraphs. We would also be supportive of Congressional action to insure that the payment limitation section applies to PIK payments as well as deficiency and other cash payments.

It is our understanding that your Subcommittee is also reviewing the tax consequences of PIK payments. We are supportive of the Congressional action which insured that Internal Revenue Service regulations would not distort farm income for tax purposes in connection with PIK payments. We felt that income from the PIK payment should be considered income at the time of sale of PIK grain by the producer and not at the time of receipt of PIK grain.

We also recognize that current federal tax laws provide unfair competitive advantages to large farm operations which have encouraged ever-increasing farm size. These advantages must be eliminated so that federal tax policies promote and protect family-farm size operations.

Since the issue of taxation of PIK payments essentially involves the cash versus accrual accounting procedures within agriculture, we would encourage the Subcommittee to consider the issue in this light. On a national basis, we have supported policies to require accrual accounting for tax purposes on farming operations on publicly owned corporations and other larger-than-family farming operations to remove this pressure which encourages ever-increasing farm size.

We believe that such a requirement would effectively prevent PIK payments from being manipulated by farm corporations and other large farm operations for their tax advantage.

The cash accounting system for agriculture was designed to serve family-sized farmers in order that they would not be subjected to complicated bookkeeping systems and expenses. It should not be the avenue for a tax loophole for those farm corporations and operations which can afford and have a battery of tax accountants and attorneys to farm the U.S. Treasury.

We recognize that your Subcommittee may not have adequate time to address the full ramifications of this broader issue at this time and is specifically concerned with the tax consequences of large PIK payments. We would, however, urge that your Subcommittee take beginning steps to consider effective limitations in tax policies which would remove the unfair competitive advantages provided in federal income tax laws and regulations to larger-than-family-sized farm operators over family farmers. The PIK payments to farm corporations and other large operations provides an opportunity to begin this task.

While we have not had adequate time to research what level a limitation on PIK payment income deferral would be appropriate to protect family-farm agriculture, we believe your Subcommittee should pursue the matter and develop a statistical base for considering acceptable remedies. We would be pleased to have an opportunity to participate in such efforts.

Sincerely yours,

STANLEY M. MOORE, *President.*

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